

Narain Das and Others

Vs

The Improvement Trust, Amritsar and Another

Civil Appeal No. 2230 of 1970

(G. K. Mitter, I. D. Dua, G. K. Mitter JJ)

03.02.1972

JUDGMENT

DUA, J. -

1. This appeal has been presented in this Court pursuant to a certificate granted by the High Court of Punjab and Haryana at Chandigarh and is directed against the order of a Division Bench of that Court, dated October 1, 1970, dismissing the appellants' writ petition challenging the legality of the order, dated May 25, 1970, passed by the Improvement Trust, Amritsar, respondent No. 1 in this Court. By the impugned order the said Improvement Trust had included in the development scheme prepared by the Trust the appellants' land measuring about 68 Kanals, 16 marlas. The appellants had also prayed in High Court that the Improvement Trust and Land Acquisition Collector be restrained from acquiring and taking possession of the appellants' said land.

2. The Improvement Trust, Amritsar, framed a development scheme in 1961 under Section 24 read with Section 28(2) of the Punjab Town Improvement Act, (No. IV) 1922 (hereinafter called the Act). The scheme covered an area measuring approximately 128 acres within the boundaries of the Municipality of Amritsar. It was framed vide resolution No. 125, dated November 10, 1961. Notice under Section 36 of the Act was issued on November 21, 1961, and was published in three consecutive issues of the Punjab Government Gazette in December, 1961 : it was duly published in the daily Tribune and Milap as well. A copy of the said notice along with survey plan of the area was also sent to the President and to the Medical Officer of Health, Municipal Committee, Amritsar in accordance with Section 36(2)(b) of the Act. Notices under Section 38 of the Act were also issued to the owners and occupiers in the area covered by the scheme. In response to notices under Sections 36 and 38 objections were received and considered by the Trust in June, 1962, when the objectors were also called for personal hearing. The lay out of the scheme prepared after considering the objections was again considered by the Trust in its meeting held in October, 1962 and was approved by means of a resolution. At this meeting it was decided by the Trust to exclude from the purview of the Scheme the built up area abutting on Mall Road. The layout was formally approved by the Senior Town Planner and was finally approved by the Trust on January 31, 1963. The scheme as finally approved provided for the development of the vast area which was mostly unbuilt and the locality was chosen to be developed mainly as a residential colony with two small plots earmarked for commercial purposes. The scheme was forwarded to the Punjab State Government on March 5, 1962; in the forwarding note all these facts were mentioned. The Governor of Punjab sanctioned the scheme on September 17, 1962, and the sanctioned was duly notified under Section 42(1) of the Act. Pursuant to this scheme the Government acquired the said 128 acres of land including the land belonging to the appellants. In April, 1964 the appellants applied to the State Government for exempting their land from acquisition on the ground that there

existed on it a fully developed orchard. The State Government recommended their case to the Chairman of the Improvement Trust with the remark that fruit orchards be exempted from the purview of the scheme. Having failed to hear anything from the Improvement Trust the appellants claim to have approached the Government a number of times with the request for exempting their land buy without success. According to the appellants the Improvement Trust had exempted similar orchards of some other persons and since failure to exempt their orchard was violative of Article 14 of the Constitution they presented a writ petition (C.W. No. 1567 of 1965) in the Punjab and Haryana High Court in 1965. That writ petition was dismissed by a learned single Judge of that Court. On Letters Patent appeal, however, a Division Bench of that Court granted to the appellants relief in the following terms :

"In view of the foregoing discussion, we are of the view that the matter of exemption deserves determination by the Trust in the light of all the relevant facts. We would accordingly accept this appeal and direct that the respondent Trust should allow full opportunity of hearing to the appellants regarding their case for exemption and after considering the same decide the case on merits."

This order was made on February 26, 1970. Apparently pursuant to these directions the appellants on March 2, 1970, made an application to the Improvement Trust, Amritsar under Section 56 of the Act. This application was rejected by the Trust by means of the impugned order which was challenged by the appellants by means of a writ petition (W.P. No. 2314 of 1970) in the Punjab and Haryana High Court in July, 1970.

3. Though in the writ petition it was also pleaded that the provisions of the Act are discriminatory and violative of Article 14 of the Constitution, in so far as they provided for two types of acquisition, namely : (i) wholesale acquisition and (ii) acquisition which permits possession with certain land owners by exempting their lands on payment of betterment contribution only, apparently at the time of arguments in the High Court this challenge to the statute was not pressed. In the High Court as appears from the judgment of the Letters Patent Bench the only point urged was that the Trust had given no reasons in the impugned order as to why the entire land of the appellants was considered necessary for the execution of the scheme. The Trust, it was contended, acts in a quasi-judicial capacity when determining the claims under Section 56 of the Act and, therefore, it was required to give reasons for its conclusions that the entire land belonging to the appellant was "absolutely necessary" for the development scheme. The contention proceeded that only the land necessary for constructing roads and sewage could be acquired and the Trust could not acquire land in order merely to make profit by re-selling it after making small plots. This submission was repelled by the Letters Patent Bench for the reason that it had not been raised before the Improvement Trust. This is what the High Court said in this connection :

"After hearing the counsel for the parties we find that there is no merit in this petition. As I have said the main argument urged by the petitioners before the Improvement Trust seemed to be that they were being given a step-motherly treatment, because the fruit orchards of other people were being exempted while their lands where fruit growing trees were standing, were being included in the scheme. It appears that the point, that is now being canvassed before us, was not pressed before the Trust. In Para 4 of the application made by the petitioners under Section 55 of the Punjab Town Improvement Act, 1922, to respondent No. 1 all that was stated was that the acquisition of most of their land was unnecessary for the execution of the scheme. Apart from making this bare statement nothing has been shown as to how it

was unnecessary. In the impugned order the Trust has made a categorical statement that the land of the petitioners was necessary for the execution of the development scheme. In Para 5 of the written statement filed by the Improvement Trust it was clearly said that the area was required for the purpose of the development scheme which inter alia included laying of streets, underground sewers, open spaces, sites for construction of buildings for residential commercial and commercial-cum-residential purposes. It was further mentioned that the land of the petitioners was required for the construction of roads, sewers and building plots etc. We have ourselves also seen the plans and we find that if a part of the petitioner's land was exempted from acquisition, it might adversely affect the development scheme. It may be noted that the scheme is one integral whole and the petitioner's land would be utilised for the construction of roads, sewerage and residential plots. When the development scheme was published the petitioner's land was considered to be necessary for the execution of that scheme and that is why it was included therein. The petitioners have not shows as to how it was not essential for the said scheme. The Improvement Trust has given reasons as to why the acquisition is necessary. It is needless to mention that the petitioners will get adequate compensation for their land which has been acquired for the said scheme. It was conceded by the counsel for the petitioners that it was not the requirement of the statute that the Trust should give reasons for saying as to how a particular land was necessary for the scheme. At any rate, in this case it has been proved on the record that the petitioner's land was essential for the development scheme framed by the Improvement Trust."

4. In this Court to begin with, Shri Gupte learned counsel for the appellants pressed his application CMP No. 1424 of 1971 under Order 47, Rule 6 of the Supreme Court Rules for the production of the agreement, dated April 8, 1964, between the trust and Akhara Brahim Buta, Amritsar through its Mahant Shri Bikram Das Chela Mahant Lachhman Dass whereby the Improvement Trust agreed to exempt an area measuring 100 Kunals under an orchard. As there was no objection to the admission of this agreement on behalf of the respondents we allowed the application. Shri Gupte then referred to the judgment of the High Court on Letters Patent appeal LPA 212 of 1967 (arising out of the earlier writ petition No. CW 1567 of 1967) and pointed out that the trust had not filed any return to that writ petition and that thus not controverted the appellants' averments made therein : nor had the Trust produced the relevant record which it should have. It was accordingly pressed by Shri Gupte that the High Court on the previous occasion felt the weight of the appellants' contention that in identical circumstances the lands of Baldev Inder Singh and Mahant Bikram Das under fruit orchards had been exempted whereas those of the appellants had been refused exemption. The High Court, it is however noteworthy, did not hold proved the appellants' averments in that writ petition, even though uncontroverted, because the learned single Judge had not accepted those averments and further because : (i) in the appellant's writ petition neither the impugned scheme had been reproduced nor had the plan showing the respective situations of the lands belonging to the appellants and to Mahant Bikram Das been produced, and (ii) it did not appear from the writ petition whether the exemption regarding Mahant Bikram Das had been granted under Section 56 of the Act or whether it had been granted under instructions from the Government or by the Trust as a result of its own independent decisions. It was in these circumstances that the Letters Patent appeal was allowed and reversing the decision of the learned Single Judge the Trust was directed to allow full opportunity of hearing to the appellants. It is also worth nothing that before the Letters Patent Bench the counsel for the Trust had conceded that the appellant's case had not been properly considered by the Trust and the material facts necessary for deciding the controversy in the

background suggested by the High Court were not on the record. In our view, the judgment of the High Court in the previous writ proceedings can be of no assistance to the appellants because all that was said by the High Court on the earlier occasion was that the appellants should be accorded full opportunity of hearing regarding their case for exemption. There is no considered decision on any controversial point which could be said to be binding on the parties on any material points requiring determination in the present proceedings.

5. The appellants' counsel then referred to written statement filed by the Trust and subjected it to criticism by contending that the Trust had not been straight and fair inasmuch as it had not fully stated all the necessary facts with the candour expected of a public body in its dealings with citizens' property. He next strongly urged that there was clear violation of the constitutional guarantee of equality before law and of the equal protection of the laws contained in Article 14 of the Constitution. Considerable emphasis was laid on the argument that there was a policy decision arrived at by the Government that all lands under fully developed orchards should be exempted from the operation of the scheme and according to the appellants' submission refusal to exempt the appellants' lands under orchards, when the lands under orchards, belonging to other persons similarly placed had been exempted, has resulted in hostile discrimination against the appellants, being in breach of the policy decision. In answer to the question whether Section 56 of the Act at all contemplates exemption of land under orchards, the appellants' learned counsel submitted that competence of application for exemption under Section 56 has never been questioned by the respondent and that no such objection should, therefore, be entertained by this Court in the present appeal.

6. The basic question which, in our opinion, initially requires consideration is the nature of the right which the appellants claim to vest in them by virtue of Section 56 of the Act. This section occurs in Chapter VI of the Act. That Chapter deals with "Acquisition, Tribunals and applications of the Act to other authorities". Section 56 with which this Chapter begins, provides for "Abandonment of acquisition in consideration of special payment" and it reads :

"(1) Wherever in any locality comprised in any scheme under this Act the State Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme the owner of such land, or any person having an interest therein, may make an application to the Trust requesting that the acquisition of such land be abandoned in consideration of the payment by him of a sum to be fixed by the Trust in that behalf.

(2) The Trust shall admit every such application if it -

(a) reaches it before the time fixed by the Collector, under Section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by any person, who either owns the lands, is mortgagee thereof, or holds a lease thereof, with an unexpired period of seven years.

(3) The Trust may admit any such application presented by any other person having an interest in the land.

(4) On the admission by the Trust of any such application, it shall forthwith inform the Collector, and the Collector shall thereupon stay for a period of three months all

further proceedings for the acquisition of the land, and the Trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(5) Within the said period of three months, or, with the permission of the Trust, at any time before the Collector has taken possession of the land under Section 16 of the Land Acquisition Act, 1894, the person from whom the Trust has agreed to accept the sum so fixed may, if the Trust is satisfied that the security offered by him is sufficient, execute an agreement with the Trust either -

(i) to pay the said sum three years after the date of the agreement, or

(ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment of interest at a rate to be agreed upon by such person and the Trust until the said sum has been paid in full and to make the first annual payment of such interest four years after the date of the agreement :

Provided that the Trust may, at any time before the Collector has taken possession of the land under Section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(6) When any agreement has been executed in pursuance of sub-section (5) or when any payment has been accepted in pursuance of the proviso to that sub-section in respect of any land, proceedings for the acquisition of the land shall be deemed to be abandoned.

(7) Every payment due from any person under any agreement executed under sub-section (5) shall be a charge on the interest of that person.

(8) if any instalment of interest payable under an agreement executed in pursuance of clause (ii) of sub-section (5) be not paid on the due date, the sum fixed by the Trust under sub-section (4) shall be payable on that date, in addition to the said instalment.

(9) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (5), any person may pay in full the charge created thereby, with interest, at the agreed rate, up to the date of such payment.

(10) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (5), no suit with respect to such agreement shall be brought against the Trust by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.

(11) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (5), and any sum payable in pursuance of that sub-section is not duly paid, the same shall be recoverable by the Trust (together with interest up to the date of realization at the agreed rate) from the said person or his successor in interest in such land in the manner provided by Section 222 of the Municipal Act, and, if not so recovered the Chairman may, after giving public notice of his intention to do so and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall

pay the balance (if any) to the defaulter."

It is obvious that this section contemplates a locality comprised in a scheme under the Act pursuant to which the Government has sanctioned the acquisition of land, which land is subsequently discovered to be unnecessary for the execution of that scheme. It is only when some land included in the scheme is discovered to be unnecessary after the sanction of the acquisition that its owner or any person having an interest therein is entitled to make an application to the Trust requesting for the abandonment of its acquisition in consideration of payment by him of a sum to be fixed by the Trust in that behalf. In other words it is when this initial condition is satisfied that the occasion for making an application for abandonment arises. The further requirement of this section is that the application for abandonment must reach the Trust before the time fixed by the Collector under Section 9 of the Land Acquisition Act, 1894 for making claims in reference to the land. When all these conditions are complied with then the Trust is bound to admit the application so made if the applicant either owns the lands in question or is a mortgagee or a lessee thereof with an unexpired lease period of seven years. When, however, such an application is made by some other persons having an interest in the land, the Trust may admit it in its discretion. It is noteworthy that unless the acquisition of land is discovered to be unnecessary for the execution of the scheme this section does not operate and there is no question of the Trust possessing any power to exempt lands from the scheme under this section. The existence of an orchard on such land which is not unnecessary for the execution of the scheme would be a wholly irrelevant consideration. In the present case there is no finding that the acquisition of the appellants' land has been discovered to be unnecessary for the execution of the scheme. Therefore, the appellants had no locus standi to invoke Section 56. The mere fact that exemption of land under orchard was granted to Mahant Bikram Das as alleged by the appellants, even assuming that exemption to be purporting to be under Section 56 of the Act, is no ground for exempting the appellants' land under Section 56 when the pre-requisites of that sanction have not been complied with. Article 14 can by no means help the appellants for claiming exemption under Section 56 when the requirements of that section are not satisfied. Article 14 guarantees to all persons in our country equality before the law and equal protection of the laws which only means that all persons are equally subject to the law and have a right to equal protection in similar circumstances both as regards privileges conferred and liabilities imposed by the laws. In other words, equal laws have to be applied to all persons in the same situation and there must be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same. Section 56 does not suffer from any vice offending Article 14 and indeed it was not so contended by Shri Gupte. What was contended by him was that while administering Section 56 there has been hostile discrimination against the appellants because lands under orchards belonging to persons similarly placed have been exempted whereas the appellants have been refused exemption. No doubt, equal protection can be denied as much by the administration of a law as by legislation. But in the present case it is not possible to hold on the material on the record to which our attention was drawn that the case of Mahant Bikram Das was so similar in all essential particulars to that of the appellants that the act of granting exemption to his land has resulted in hostile discrimination against the appellants. In any event if the appellants have failed to bring their case within Section 56 of the Act then merely because some other party has erroneously succeeded in getting his lands exempted ostensibly under that section that by itself would not clothe the present appellants with a right to secure exemption for their lands. The rule of equality before the law or of the equal protection of the laws under Article 14 cannot be invoked in such a case.

7. But then it was contended on behalf of the appellants with a certain amount of force that the policy decision of exempting lands under fully developed orchard arrived at by the State

Government had to be administered without discrimination and if under that the decision Mahant Bikram Das was given the benefit of exempting his fruit orchards then refusal to extend the same exemption to the appellants is clearly violative of the fundamental right guaranteed to them by Article 14 of the Constitution. In our opinion, the argument is misconceived.

8. To begin with we are not satisfied of the existence of any such police dictation as is suggested. Memorandum No. 6907-2611-64, dated August 18, 1964, from the Secretary to Government, Punjab Local Government Department, to the Chairman, Improvement Trust, Amritsar indicating agreement with the recommendation of the Horticulture Department and advising the Trust not to acquire fully developed orchards does not seem to us to amount to any general policy decision authorised by the Act. It does not fall under any provision of the Act which would clothe the owners of the orchards to claim alteration of the scheme or abandonment of acquisition of their orchards. The scheme, it may be recalled, had been finally sanctioned by the State Government about six months earlier and our attention was not drawn to any provision of the Act which could justify any such policy decision after the final sanction of the scheme which could vest in the appellants a right to claim exemption of their orchards from the acquisition of land. It also seems to us doubtful if there can be any subsequent policy decision in the matter of development and expansion scheme after it is sanctioned under Chapter IV of the Act. A close examination of this Chapter shows that when a scheme is framed pursuant to official representation by the Municipal Committee or otherwise as contemplated by Section 33 and compliance with Section 34 and 35 of the Act, the Trust has to prepare a notice under Section 36 pursuant to which objections are invited. This section reads :

"36. (1) When a Scheme under this Act has been framed, the Trust shall prepare a notice stating -

(i) the fact that the scheme has been framed,

(ii) the boundaries of the locality comprised in the scheme, and

(iii) the place at which details of the scheme including a statement of the land proposed to be acquired and a general map of the locality comprised in the scheme may be inspected at reasonable hours.

(2) The Trust shall -

(a) notwithstanding anything contained in Section 78 cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received, and

(b) send a copy of the notice to the President of the Municipal Committee, and to the Medical Officer of Health.

(3) The Chairman shall cause copies of all documents referred to in clause (iii) of sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed by rule under Section 74."

9. Section 38 provides for notice of proposed acquisition by the Trust to the owners and occupiers of the property proposed to be acquired in executing the scheme within 30 days of the first

publication of a notice under Section 36. Under Section 40 the Trust considers the objections and after hearing the objections or their representatives desiring to be heard either abandons the scheme or applies to the State Government to sanction the scheme with such modifications, if any, as the Trust may deem necessary. The fact of submitting such application to the State Government is required to be published for two consecutive weeks in the Official Gazette and in newspapers. Section 41 empowers the State Government to sanction the scheme with or without modification or to refuse the sanction or to return it for reconsideration. But a modified scheme after reconsideration is required again to be republished under Section 36. It is thereafter that a scheme is sanctioned and notified by the State Government. The provisions of Chapter IV clearly disclose a keen anxiety on the part of the law-makers to see that all possible objections to the scheme are fully considered before its final sanction. It appears that any policy decisions, arrived at by the State Government for excluding from the scheme, lands under orchards, would have been considered by the State Government before finally sanctioning the scheme. There was ample opportunity for that purpose. The owners of the orchards were expected to have moved in time and the State Government could also have incorporated its decision in the scheme as finally sanctioned by it. The Act does not seem to us to contemplate any change or alternation in the sanctioned scheme pursuant to any subsequent policy decision arrived at by the State Government as suggested on behalf of the appellants. There is accordingly no scope for the argument that the Government had arrived at a policy decision which was left to the Trust for implementation. In any event our attention was not drawn to any provision of the Act contemplating such a procedure for varying a sanctioned scheme by incorporating in it such a policy decision. Shri Gupte, however, relied on Section 43 of the Act for his submission that the Trust had full authority to alter the scheme between its sanction and execution and the Trust, according to this submission should have so altered the scheme as to carry out the policy decision of the State Government in order to give relief to the appellants. This section reads :

"43. A scheme under this Act may be altered by the Trust at any time between its sanction by the State Government and its execution :

Provided as follows -

(a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than Rs. 50,000 or twenty per cent. of such cost such alteration shall not be made without the previous sanction of the State Government;

(b) if any alteration involves the acquisition, otherwise, than by agreement of any land the acquisition of which has not been sanctioned by the State Government the procedure prescribed in the foregoing sections of this chapter shall, so far as applicable, be followed as if the alteration were a separate scheme."

10. It is an enabling provision which empowers the Trust to alter the scheme after its sanction but before its execution. It does not confer any right on persons like the appellants to demand alteration of a scheme in order to get their land exempted from acquisition. As observed by the High Court, the appellants' lands were considered by the Trust to be essential for the scheme which is an integrated whole. Though a faint attempt was made to show that this observation is unjustified, in our view, no fault can be found with the view taken by the High Court. Now, if that be the position then it is not understood how the appellants can claim a right of compel the Trust to so alter the scheme as to exclude their land from acquisition. Acquisition of land included in a sanctioned scheme can be abandoned if it is discovered to be unnecessary as provided by Section 56 and if

other conditions of that section are complied with. It is doubtful if Section 43 was intended to confer a wider power of excluding land from acquisition than conferred by Section 56. These two sections have to be read harmoniously and so read it is not easy to construe Section 43 as suggested on behalf of the appellants. However, without expressing any considered opinion on the scope and effect of this section we have no doubt that this section does not entitle the appellants to claim a right to the alteration of the scheme pursuant to any alleged policy decision of the State Government so as to exclude their orchards from the acquisition proceedings either under Section 43 or under Section 56 or claim exemption independently of these sections. This submission accordingly also fails.

11. We have gone into the question of violation of Article 14 of the Constitution though in the High Court's judgment it was specifically stated that the learned counsel for the petitioners there had not urged the point of discrimination and the only point argued there was that the Trust was bound while acting in a quasi-judicial capacity to give reasons as to why the entire land belonging to the appellants was necessary for the execution of the scheme. Although in the High Court's judgment it is observed that the point of discrimination had not been urged in that Court we have gone into this question because, according to Shri Gupte, this was the main point on which the appellants relied for their claim and that it was not pursued because the High Court was not inclined to agree with it. The observation in the High Court's judgment, according to the learned counsel, was perhaps due to some misunderstanding. Before us the counsel urged this point as a pure point of law depending on the construction of the provisions of the Act.

12. It was not seriously argued before us, and in our opinion, rightly so, that the Trust was bound to give reasons for holding as to why the entire land of the appellants was necessary for executing the scheme. There is no provision of the Act which imposes such an obligation on the Trust when coming to a decision under Section 56 and indeed in the High Court this point was conceded by the appellants.

13. An attempt was also made by Shri Gupte to show by reference to a map that the land of the appellants and of those who were granted exemption were similarly located. We do not consider it necessary to go into that question : nor is it competent to this Court in these proceedings to go into such questions of fact.

14. The appeal accordingly fails and is dismissed; but in the circumstances of the case without costs.

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