

Phagwara Improvement Trust

Vs

State of Punjab and Others

Civil Appeal Nos. 5036-39 of 1989

(B. C. Ray, N. M. Kasliwal JJ)

10.10.1990

JUDGMENT

B. C. RAY, J. -

1. These appeals on special leave are directed against the judgment and order passed by the Division Bench of the High Court of Punjab and Haryana in Letters Patent Appeal Nos. 694 to 697 of 1982 dismissing the appeals with costs. The salient facts out of which these appeals have arisen, are as follows :

The appellant Trust prepared a development scheme under Section 24 read with Section 28 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as 'the Act') in relation to an area of about 60 acres of land at Palani Road. The lands of the respondents fell within the said area. On April 9, 1976 a notice under Section 36 of the Act was published in daily Tribune inviting objections within May 5, 1976. This notice was published in the three consecutive weeks of the said newspaper dated April 9, April 16 and April 23, 1976. The very notice of the said scheme was also published under Section 36a of the said Act in the Punjab Government Gazette on three consecutive weeks i.e. May 7, May 14 and May 21, 1976 inviting objections till May 5, 1976 against the scheme framed. In accordance with the provisions of Section 38 of the said Act the Trust also served notice on every person who was occupier or owner of any immovable property falling within the area proposed to be acquired in executing the scheme within 30 days from the date of publication of the notice under Section 36, in order to enable the owners and occupiers of such premises to file objections to such acquisition and to state their reasons in writing within a period of 60 days of service of the notice. After completion of the acquisition formalities, a notification under Section 42 of the said Act was published on March 26, 1979. Respondent 2 and others assailed the appellant's scheme notified under the Act in C.W.P. No. 2561 of 1979 and C.W.P. Nos. 4075, 3615, 3654 of 1981 in the ground that they could not file objections against the scheme in terms of Section 36 of the Act till May 5, 1976 as the notification was published in the Punjab Government Gazette on May 7, May 14 and May 21, 1976. These writ petitions were allowed by order dated February 25, 1982 and the sanctioned scheme notified under Section 42 of the Act was quashed. It was also mentioned in the said order that the appellant may, however, publish the scheme against either amended or unamended under Section 36 of the said Act and proceed further in the matter in accordance with law. It is against this order the L.P.A. Nos. 694 to 697 of 1982 were filed. The Division Bench of the High Court affirmed the judgment and order of the learned

Single Judge and held that the provisions contained in Section 36 of the Act were mandatory and as it had not been complied with in the present cases, the illegality of non-compliance of the mandatory provisions contained in Section 36 would not stand cured under Section 101(1)(d) of the Act. Hence the letters patent appeals were dismissed.

2. Against this judgment and order the instant appeals on special leave have been filed in this Court. Mr Mahajan, learned counsel appearing on behalf of respondent 2 and others has very strenuously contended that the provisions of Section 36 of the said Act are mandatory inasmuch as it provides for publication of the notice as to the framing of the scheme under the Act in three consecutive weeks in the official Gazette as well as in the newspapers with a statement inviting objections. Though the notice was duly published in the newspaper Tribune for three consecutive weeks on April 9, 16 and 23, 1976 notifying the date for filing objections till May 5, 1976 yet the notification that was published in the Punjab Government Gazette for three consecutive weeks was admittedly after the expiry of period of filing objections i.e. May 5, 1956. It has, therefore, been contended by Mr Mahajan that due to non-publication of the scheme in the Government Gazette before the expiry of the period of filing objections against the proposed scheme, the valuable right of the respondents to file objections against the scheme has been done away with. As such the publication of the scheme was rightly quashed by the courts below as this mandatory requirement had not been complied with by the State. In this connection, he has referred to the case of Prof. Jodh Singh v. Jullundur Improvement Trust, Jullundur [AIR 1984 Punj 398 : 1984 Pun LJ 413 : ILR (1984) 2 P&H 222]. This case was decided by the Full Bench of the High Court of Punjab and Haryana as to whether issuance of a notification under sub-section (1) of Section 42 of the Punjab Town Improvement Act, 1922, would bar a challenge to the validity of the scheme or the governmental sanction thereto for any reason including the reason that the scheme had been framed and sanctioned without compliance of the mandatory provisions particularly those of Sections 36, 38 and sub-section (1) of Section 40 of the Act. It was held that : (AIR p. 408, para 33)

"Since the given provisions do not merely provide for the framing of the scheme simpliciter but also provide for acquisition of property to enable the execution of the scheme and since no person can be deprived of his property without being heard and one cannot ask for hearing unless he knows that he is being deprived of his property, so, by necessary implication a notice of the intention of the authorities of acquiring a given person's property is impliedly necessary to enable him to bring to the notice of the concerned authority his objections against the acquisition of his property. Hence such provisions as provide for notice, raising of objections and personal hearing in support of the objection would be mandatory in character".

3. In that case a notice under Section 38 of the Act was issued on the petitioner who submitted objections in time. In the return filed on behalf of the Trust it was admitted that due to oversight, the petitioners could not be called for hearing along with other objectors as the objections filed by the petitioners had inadvertently got placed in some other file and that for the same reason their objections were neither considered by the Trust nor forwarded to the State Government along with the summary of the objections submitted at the time of sanction for the said scheme. It was contended on behalf of the Trust that the infirmity, if any, stemming from the non-consideration by the Trust of the objections filed by the petitioners and sanction of the scheme by the government in ignorance of the said fact stood cured by the provisions of sub-section (2) of Section 42 of the Act. It was in that context the above observation was made by the Full Bench.

4. Mr Mahajan next contended that though admittedly notices under Section 38 of the said Act were issued on respondent 2 and others who are either owners or occupiers of the lands falling within the improvement scheme of the appellant and respondent 2 and others had filed objections against the proposed acquisition of their lands, yet on the basis of the said individual notices issued under Section 38 of the said Act, respondent 2 and others are debarred from raising objections against the proposed improvement scheme. It is further submitted that under Section 38 the owners and occupiers of the land affected by the said scheme may merely object to the proposed acquisition of their lands but they cannot file objections against the scheme published. Respondent 2 and others are therefore, deprived of their right to file objections against the scheme as provided in Section 36 of the said Act and so in view of the non-compliance of the provisions of Section 36 of the said Act by the State Government, the development scheme cannot be enforced merely because the State Government notified the sanction of the scheme under Section 42 of the Act.

5. The learned counsel appearing on behalf of the appellant on the other hand, contended that in compliance of the provisions of Section 36 of the said Act a notice regarding the framing of the development scheme was published in the newspaper Tribune for three consecutive weeks i.e. on April 9, 16 and 23, 1976 inviting objections till May 5, 1976. It is only in the Punjab Government Gazette that the notification was published on May 7, 14 and 21, 1976 inviting objections till May 5, 1976 i.e. the notification was made in the Punjab Government Gazette after the period for filing objections had expired. It has also been contended that individual notices under Section 38 of the said Act were served on the owners and occupiers of the immovable property falling under the development scheme intimating them about the acquisition of the land with particulars of the lands falling within the said scheme and inviting their objections to be filed within a period of 60 days from the date of service of the notice. It has also been submitted that respondent 2 and others i.e. the owners of the lands duly submitted their objections against the acquisition of the land as well as against the proposed scheme and the same were heard and considered by the prescribed authority. After the hearing of the objections, a notification was made by the State Government sanctioning the said scheme and also that this Trust shall proceed forthwith to execute the said scheme. It has, therefore, been submitted that in these circumstances, the objections raised by the counsel for respondent 2 and others are wholly unsustainable being devoid of any merit.

6. It is convenient to mention herein that the award determining the compensation was passed in 1980 and the compensation to the tune of Rs 32 lakhs had already been paid. A sum of Rs 2,30,465.08 had been spent for the construction of roads and footpaths. Another sum of Rs 1,12,217.24 had been spent for lighting of the streets. Another sum of Rs 3 lakhs had been paid to the Punjab Water Supply and Sewerage Board for sewerage purposes. Thus, a sum of Rs 38,42,682.35 had already been spent for implementation of the scheme. Several plots had already been sold in open auction. The reference under Section 18 of the Act is also pending. In this context we are to consider to contention raised by the learned counsel for respondent 2 and others. Under Sections 24 and 28 of the Punjab Town Improvement Act, 1922, the impugned development scheme was prepared by the appellant-Trust. The scheme was notified as has been referred hereinbefore in accordance with the provisions of Section 36 of the Act. Insofar as the publication of the scheme in the newspaper Tribune in three consecutive weeks in April 1976 inviting objections thereto till May 5, 1976 is quite in accordance with the provisions of the said section. The Gazette Notification published in three consecutive weeks was however, made after expiry of the period of filing objections against this scheme. This has been the bone of contention on behalf of respondent 2 and others that this resulted in violation of the provisions of Section 36 of the Act as their right to file objections against the scheme was set at naught. This contention in our considered opinion is totally devoid of merit inasmuch as admittedly individual notices under Section 38 of the said Act were

duly served on all owners and occupiers of the land falling within the said scheme and purported to be acquired and respondent 2 and others admittedly filed objections against the proposed acquisition of their land. The said objections were duly considered after hearing respondent 2 and others and notice was issued sanctioning the scheme by the State Government. In these circumstances, it does not lie in the mouth of respondent 2 and others to challenge the scheme on the mere plea that the Gazette Notification was not duly published. The legislative intent of provision of Section 36 read with Section 38 of the said Act is to afford reasonable opportunity to the owners and occupiers affected by the proposed scheme to file objections not only against the scheme but also against the acquisition of their lands falling within the scheme and to achieve this purpose not only notifications in the Government Gazette and newspaper are to be published but also individual notices on each of the persons affected are to be served with details of the plots of land falling within the scheme and proposed to be acquired with a view to giving them adequate opportunity to file objections both against the scheme as well as against the proposed acquisition of their lands. It is, therefore, incomprehensible to contend that non-observance of provisions of Section 36 of the said Act by not publishing the notification in the Government Gazette before the expiry of the date for filing the objections renders the publication of the entire development scheme illegal and bad. The above contention, in our considered opinion, is not at all sustainable on the simple ground that respondent 2 and others were duly served with the notices under Section 38 and they pursuant to that notice duly filed their objections against the acquisition as well as the scheme. The decision of the Full Bench reported in Prof. Jodh Singh v. Jullundur Improvement Trust, Jullundur [AIR 1984 Punj 398 : 1984 Pun LJ 413 : ILR (1984) 2 P&H 222] is not applicable to this case inasmuch as in that case the objections filed under Section 38 of the said Act having been misplaced were not at all considered and thereafter the government issued a notification under Section 42 of the said Act giving sanction to the scheme itself. In that view of the matter, the said decision has no application to the instant case.

7. In these circumstances, considering from all aspects we hold that the decision of the courts below is wholly untenable in law and as such they are liable to be set aside. We, therefore, set aside the decision of the learned Single Judge as well as of the Division Bench of the High Court of Punjab and Haryana and allow the appeal setting aside the orders of the courts below. There will, however, be no order as to costs.

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