Improvement Trust, Moga

Vs

Manchanda Soap Works and Others

Civil Appeal No. 18 of 1991 with C. A. Nos. 19 to 22 of 1991, 8863 and 8864 of 1994

(K. Ramaswamy, S.P. Bharucha JJ)

16.04.1996

JUDGMENT

1. This appeal by special leave arises from the judgment of a Division Bench of the Punjab & Haryana High Court made on October 3, 1988 in CWP No. 1804 of 1986. The facts fairly are not in dispute.

2. The appellant had initiated a truck scheme under S. 36 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the 'Act') which was duly published in daily Tribune on January 10,17 and 24, 1975 for acquiring an extent of 15.5 acres of land in Moga for diversion of the trucks from passing through Moga Town and stationing them at the proposed new Mandi Market. Objections had been invited under S. 38 by public notice dated January 24, 1975. Objections were filed on March 25, 1975. After framing the scheme, a layout plan was prepared for inspection by the affected persons. Fresh notice was published in the daily Tribune on May 13, 20 and 27, 1975. It was also published to local daily by name 'Ajit' on May 11, 18 and 25, 1975. After the Government's approval was received, it was published in the same manner on May 23, and 30, 1975 and June 6, 1975 respectively. The individual notices were issued to all the persons under S. 38 inviting objections to the Scheme since the Trust had decide to take over possession of the aforesaid property. Notice were, in fact, sent to the respondent by registered post with acknowledgment due on June 11, 1975. Notice were serviced on June 12, 1975 and objections came to be filed by the respondents on August 8, 1975. After receipt of objections and consideration thereof, notice in the daily Tribune and also Ajit calling upon the owners to appear before the Committee, were published on August 20, 1975 fixing the date of hearing as August 25, 1975. It was stated as under :

> "It is for the information of general public and in particular the owners of the area falling in–
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> (i) Scheme No. 1 regarding the land near Thana Sadar, Moga,
>
> (ii) Scheme No. 3 regarding the land between the D. B. Rest House and the New Grain market under construction, that they will be heard in person in the office of the undersigned on 25-8-75 at 3-00 p. m. in respect of the above schemes.
>
> Sd/-
>
> (Gurdeep Singh)

Chairman

Improvement Trust, Moga."

3. It would appear that the respondents did not appear on the said date at about 3-00 p. m. fixed for August 25,1975. Accordingly, in the meeting held on the aforesaid date it was decided to forward the scheme for the approval of the Government under S. 40 of the Act. After receipt of the approval form the Government of the Scheme under S. 40 (3) of the Act, notices were published on October 2 and October 9, 1975 respectively. Public notices also were published in the local vernacular daily newspaper, viz., Ajit, on October 5 and 10, 1975 respectively. Government notification was published on October 2, 1975 and October 10, 1975. Notification, as required under S. 41 (1) of the Act, was also published in the Government Gazette dated 26th December, 1975 regarding the sanction of the scheme. It would thus be clear that the procedure prescribed under the Act had been followed in letter and spirit of the provisions of S. 40 of the Act.

4. Procedure for publication has been provided in Ss. 78 and 79 which read as under :

> "78. Method of giving public notice Subject to the provisions of this Act, every public notice required under this Act shall be deemed to have been duly given if it is published in some local newspaper (if any) and pasted upon a notice-board to be exhibited for public information at the building in which the meeting of the trust are ordinarily held.
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> 79. Service of notice.– (1) Every notice other than a public notice, and every bill, issued under this Act shall, unless it is under this Act, otherwise expressly provided, be served or presented–
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> (a) by giving or tendering the registered notice or bill, or sending it by registered post, to the person to whom it is addressed, or
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> (b) if such person cannot be found, then by leaving the notice or bill at his last known place of abode, if within municipal limits, or by giving or tendering it to some adult male member or servant of his family, ordinarily residing with him or by causing it to be affixed on some conspicuous part of the building or land (if any) to which it relates.
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> (2) When a notice is required or permitted under this Act to be served upon an owner or occupier, as the case may be, of a building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof in cases not otherwise specially provided for in this Act shall be effect either–
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> (a) by giving or tendering the notice, or sending it by post, to the owners or occupier or if there be more owners or occupiers than one, to any one of them, or
>
> (b) if such owner or occupier cannot be found, then by giving or tendering the notice to an adult male member or servant of his family ordinarily rising with him or by causing the notice to be affixed on some conspicuous part of the building or land to which it relates.
>
> (3) Whenever the person on whom a notice or bill is to be served is a minor, service

upon his guardian or upon an adult male member or servant of his family ordinarily residing with him shall be deemed to be service upon the minor".

5. A reading of the Sections would clearly indicate that the statute requires general publication. The publication in that behalf in the newspaper and Gazette is mandatory requirement. On the facts of this case, they were, in fact, published in the newspapers. Therefore, the Act did not provide for any individual notice or personal hearing under S. 79 of the Act read with Ss. 36 and 38 of the Act. In consequence, the objections (objectiors?) are not required to be served with personal notice. Notice in the newspaper, as required under the Act, was intended to be sufficient notice for the objectors. The High Court, therefore, was not right in its conclusion that the respondents could not have read and had not read the newspapers. That reason is obviously fallacious. Once the statute requires publication of notification in the newspaper, that is the sufficient compliance. It presumes that the intending objectors are put on notice of the hearing and it is for them to appear and if they fail to appear they cannot make any grievance of non-issuance of personal notice which statute does not required them to be served.

6. Mr. D. V. Sehgal, learned senior counsel for the respondents, and Mr. Mukul Mudgal, learned counsel for the appellant in the connected appeals, contended that unless re-housing schemes as enjoined under Ss. 26 and 27 of the Act are framed and executed, the respondents cannot be dispossessed from the properties in their possession. It would be seen from their own averments that they have the composite buildings, namely, factory and residential houses. We need not go into the controversy whether the factory and houses have been constructed in accordance with the procedure prescribed under the law. Suffice it to start that there exist a factory and composite residential premises in the factory. The main thrust of the argument of Shri Sehgal is that unless a rehousing scheme is framed and implemented, the truck scheme, in other words non-residential scheme, cannot be put in operation. We do not find force in the contention. A reading of Ss. 26 and 27 would indicate that wherever a scheme for housing is said to be established, the displaced house-owners are required to be re-house under the scheme. If the legislature intends that even for non-residential schemes, established of the re-housing scheme is a condition precedent, it would appear that no non-residential scheme can be implemented until the residential scheme is fully put in operation. It is common knowledge that for framing a residential scheme, acquiring the land and construction would take years. In the meanwhile, the non-residential scheme would be rendered ineffective. Under those circumstances, considered from the pragmatic point of view, it must be held that for acquisition of the land to effectuate non-residential schemes, it is not mandatory that re-housing of the residential scheme should be first initiated, implemented and them non-residential scheme would be taken up. Considered from this perspective, we do not think that there was any justification for the High Court to interfere with the conclusion.

7. It would be seen that an award had already been passed and amount was deposited. Except the respondents, all others have surrendered possession of the land. Pursuant to the direction issued by this Court, the respondents submitted a detailed report regarding the proposed scheme and also existence of the factories of the respondents. On a perusal thereof, any direction to exclude the factories in which the respondents have set up would create innumerable difficulties frustrating the scheme and day to day complications. Under these circumstances, it would be difficult for this Court to give any such direction. It is now contended that since respondents have been residing in those places, re-housing would also be provided to them. It would be open to the respondents to make an application to the appellants and the appellants have to consider and dispose of the application in accordance with the rules after giving notice of hearing to them. The respondents are given six months' time from today to deliver possession of filing their usual undertaking within four

weeks from today.

8. The main appeal of the trust is allowed. The appeals filed by the claimants are dismissed. No costs. Order accordingly.