

**SUPREME COURT OF INDIA**

Sham Lal

Vs.

State of Punjab

C.A.No.6284 of 2013

(G.S.Singhvi and Gyan Sudha Misra JJ.)

06.08.2013

**JUDGMENT**

**G. S. SINGHVI, J.**

1. Leave granted.

2. These appeals are directed against order dated 19.01.2011 of the Punjab and Haryana High Court whereby the writ petitions filed by the appellants questioning the acquisition of their land for implementation of Ring Road Phase-I Development Scheme (for short, 'the scheme') were dismissed.

3. The appellants own small plots of land within the municipal limits of Bhatinda. They constructed houses on their respective plots. Some did so after getting the building plans sanctioned by the competent authority while others did that after depositing the development charges. The Municipal Council (now the Municipal Corporation), Bhatinda has provided civic amenities like electricity, water, sewerage, etc., in the localities where the appellants have constructed their houses.

4. By resolution dated 12.12.2000, Improvement Trust, Bhatinda (for short, 'the Trust') framed the scheme covering an area measuring 45.57 acres. Thereafter, notice under Section 36 of the Punjab Town Improvement Act, 1922 (for short, 'the Act') was issued to enable the interested persons to file objections. Some of the appellants filed objections and prayed that their plots may not be acquired because they had already constructed houses after getting the plans sanctioned from the competent authority. After hearing the objectors, the Chairman of the Trust passed the following order:

“The objectors whose construction is of ‘A’ category as per survey plan, are adjusted and exempted as per Government instructions subject to the condition that no structure falls in the roads.

So far exemption and adjustment of small plot-holders, the matter will be taken up in the Trust meeting. Hon’ble Local Bodies Minister and Local Minister have also desired that small plot-holder be adjusted and exempted on payment of requisite fee/charge. I recommend that small plot-holders be adjusted and exempted while taking up the matter in the Trust meeting for approval of the scheme. It will not affect the scheme, rather will minimize the litigation.

Rest of the objections carry no weight and are rejected, further proceedings be done for completion of the scheme and STP be requested accordingly.”

5. The layout plan of the area was approved by STP (South). The Trust also passed resolution dated 1.1.2002 and approved the lay out plan. Simultaneously, the concerned officers were directed to take action for getting the scheme approved from the State Government. In the resolution, it was specifically mentioned that ‘A’ class buildings be adjusted in the scheme and, as per the policy of the State Government, small plot holders may also be adjusted on ‘as is where is’ basis subject to the payment of development and exemption charges. For the sake of reference, the resolution passed by the Trust is reproduced below:

“The layout plan is passed unanimously. Action be taken to get approval from the Government in time. “A” class building marked in the Survey Plan and the Layout Plan are adjusted. As per Government public welfare policy, the lands of small-plot-holders which are shown in the plan as shaded in cross-lines are adjusted as is where is. However, the owners of adjusted buildings and plots shall be liable to pay development and exemption charges. The above decision is taken unanimously keeping in view the interest of the public as well as of the Trust. This shall not affect the Scheme of the Trust and the important project of the Ring Road shall be completed which shall decrease the traffic and pollution in the town. Shri Gulzar Singh, DTP, got a note written that there are no rules for adjustment has been written to earlier about this and the adjustment of the plots is in the interest of the public as well as the Trust. This shall not hinder the planned development which is the main object of the Trust.”

6. Thereafter, the District Town Planner inspected the area of the scheme by associating the trustees and the officers of the Trust and sent letter dated 3.1.2002 to the Chairman of the Trust pointing out several deficiencies in the layout plan, including the following:

(i) The existing streets situated in and around the scheme area were not shown in the layout plan.

(ii) The proposal for closure of a large number of streets was technically faulty and was contrary to public interest.

(iii) The closure of gates of private houses opening to the streets was not warranted.

(v) The categorisation of the constructions as 'A', 'B' and 'C' classes had not been shown in the plan.

7. The District Town Planner suggested that the layout plan be redrawn keeping in view the ground situation and the link roads be integrated in the new plan. It is not clear from the record whether the deficiencies pointed out by the District Town Planner were rectified and the suggestions made by him were accepted.

8. By an order dated 15.01.2002, the Secretary, Local Government Department, Punjab partially annulled the resolution passed by the Trust. For the sake of reference that order is reproduced below: "Government of Punjab Department of Local Government (L.G. 2 Branch)

#### ORDER

1. Whereas Improvement Trust, Bhatinda passed a resolution No.8/2002, dated 1.1.2002. In this resolution, it was decided to adjust as per site small plot holders failing in 45.57 acre Development Scheme ring road Phase-1.

2. Whereas the resolution No.8/2002 passed by the trust is not as per provisions of the Govt. instructions No. 5051-2C.I/76./ 32537, dated 8.9.1976.

3. After considering all aspects of the case I, B.C. Gupta, I.A.S. Secretary to Government of Punjab, Local Government Department exercising the powers under Section 72-E of Punjab Town Improvement Act, annul

partially the resolution No.8/2002, dated 1.1.2002 of Improvement Trust, Bhatinda.

Dated: 15.1.2002

B.C. Gupta, I.A.S.

Secretary, Government of Punjab

Local Government Department,

Punjab”

9. Thereafter, the State Government issued notification dated 17.1.2002 under Section 42(1) of the Act and sanctioned the scheme not only for the construction of ring road but also for development of area for residential, commercial and public buildings. The State Government also rejected the recommendation of the Trust to adjust the vacant plots coming within the boundaries of the scheme.

10. The residents of Khasra Nos.2399 and 2356 and members of Jujhar Singh Nagar Welfare Society, Bhatinda submitted representation dated 25.12.2002 to the Administrator/Chairman of the Trust and Secretary, Local Self Government Department for release of their plots by pointing out that while preparing the scheme and notifying the same, the Trust and the State Government ignored the fact that a large number of houses had already been constructed. The concerned authority partly accepted the representation and changed the boundaries of the scheme so as to exclude some portions of the properties of the representationists.

11. As a sequel to the issue of final notification under Section 42(1) of the Act, Land Acquisition Collector, Improvement Trust, Bhatinda passed award dated 16.1.2004 whereby he fixed market value of the acquired land at the rate of Rs.600/- per sq. yard.

12. Since the appellants could not persuade the Trust and the State Government to exempt/release their land, they filed Writ Petition Nos. 2570/2004, 4272/2004, 10823/2004, 12439/2004, 15187/2004 and 19700/2006 and prayed for quashing the notice issued under Section 36 and the notification issued under Section 42 of the Act. This prayer was founded on the following assertions:

- i) The scheme was framed by the Trust without considering the relevant parameters.
- ii) Those who had filed objections were not given effective opportunity of hearing.
- iii) The decision to release only 'A' class constructions was discriminatory and violative of Article 14 of the Constitution.
- iv) The State Government arbitrarily rejected the recommendations made by the Trust for adjusting the small plots on which houses had already been constructed.
- v) The order passed by the Secretary to the Government is vitiated due to violation of the principles of natural justice in as much as the plot owners were not given effective opportunity of hearing and no reason was assigned for modification of resolution dated 1.1.2002 passed by the Trust.

13. In the counter affidavits filed on behalf of the respondents, it was claimed that the scheme had been framed in accordance with the provisions of the Act and the plots of the writ petitioners could not be exempted/adjusted because they were within the boundaries of the scheme. It was also pleaded that the scheme was sanctioned after hearing the objectors and no discrimination had been practised in releasing the plots or granting exemption to the particular parcels of land. According to the respondents, a total of 46 constructions (34 'A' class constructions and 12 'C' class constructions) were in existence at the time of issue of notice under Section 36 and all 'A' class constructions were exempted in accordance with the policy of the State Government.

14. During the pendency of the writ petitions, the Chairman of the Trust Shri Jagroop Singh submitted report dated 27.12.2005 to the State Government mentioning therein that the record of the Trust does not contain any indication about the issuance of notice under Section 9 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') and the award was not pronounced on 16.1.2004 at Bhatinda. Shri Jagroop Singh also pointed out that the award was incomplete because assessment of houses, trees, tubewell, etc., had not been done. He suggested that the plots on which construction had already been raised may be left out so that the Trust will not be required to contest unnecessary litigation. Deputy Commissioner, Bhatinda also sent letter dated 22.7.2006 to the State Government stating that 5222

sq. yards land should be acquired for the scheme and the remaining 2278 sq. yards should be released.

15. The Division Bench of the High Court dismissed the writ petitions by recording the following reasons:

- a) The writ petitioners cannot complain that they were not given opportunity of hearing because most of them had not filed objections in response to the notice issued by the Trust under Section 36 of the Act.
- b) The recommendations made by the Trust for release of the plots was not binding on the State Government and no illegality was committed by invoking the provisions of Section 72-E for the purpose of modification of resolution dated 1.1.2002.
- c) The report of the District Town Planner could not be relied upon for recording a finding that there were factual errors in the layout plan, and, in any case, the deficiencies pointed out by him were not relevant for deciding the legality of the notification issued under Section 42 of the Act.
- d) No evidence was produced by the writ petitioners to show that they had constructed houses prior to the issue of notice under Section 36 of the Act.
- e) The satisfaction recorded by the competent authorities on the necessity and justification of framing the scheme and approving the same cannot be subjected to judicial review.

16. S/Shri Pinaki Misra, Shyam Divan, learned senior counsel and Shri Manoj Swarup, learned counsel appearing for the appellants argued that the impugned order is liable to be set aside because the High Court has not assigned cogent reasons for negating their clients' challenge to the acquisition of land. Learned counsel pointed out that most of the appellants had constructed residential houses much before the issue of notice under Section 36 and the State Government committed serious error by not exempting their plots on the ground that the constructions were not 'A' class. They relied upon the judgments of this Court in *Sube Singh v. State of Haryana* (2001) 7 SCC 545 and *Hari Ram v. State of Haryana* (2010) 3 SCC 621 and argued that the State cannot practise discrimination in the matter of grant of exemption from acquisition or releasing the acquired land on which construction had already been raised merely because the quality of construction is different. Learned counsel emphasized that the Trust, which had

framed the scheme, had itself recommended exemption of the small plots, and the Secretary to the Government illegally modified the resolution of the Trust by exercising the power vested in the State Government under Section 72-E of the Act. Learned counsel then argued that the High Court committed serious error by refusing to quash the order passed by the Secretary despite the fact that he did not assigned any reason for modification of resolution dated 01.01.2002. Learned counsel referred to the report of the District Town Planner to show that the scheme framed by the Trust was deficient in several aspects and argued that such a defective scheme cannot be effectively implemented and the plots of the appellants cannot be acquired to give benefit to private developers, who are likely to grab the acquired land by the methodology of allotment through lottery or by auction. Learned counsel submitted that the scheme framed by the Trust is not only for the ring road, but also for residential and commercial purposes and there is absolutely no justification to demolish the houses of the appellants for providing plots to others. In support of this argument, the learned counsel relied upon the judgments of this Court in *Dev Sharan v. State of U.P.* (2011) 4 SCC 769, *Narpat Singh v. Jaipur Development Authority* (2002) 4 SCC 666 and *Tulsi Cooperative Housing Society, Hyderabad v. State of A.P.* (2000) 1 SCC 533. Learned counsel also relied upon additional affidavit dated 26.11.2009 filed by Shri Gora Lal, Executive Officer of the Trust before the High Court and the statement made by the Additional Advocate General, Punjab on 16.9.2009 that the State Government will have no objection to the release of the land except the area falling under the proposed ring road and the berms appurtenant thereto and argued that in view of the stand taken by the State Government, the High Court was not at all justified in rejecting the appellants' prayer for ordering release of their plots. Learned counsel also criticised the High Court's view that the writ petitions were belated. They pointed out that the appellants had approached the Court soon after finalisation of the scheme by the State Government and they cannot be accused of being guilty of delay because notice under Section 9 of the 1894 Act had not been served upon them and they had no knowledge about the award passed on 16.1.2004.

17. Shri Salil Sagar, learned senior counsel for the Trust supported the impugned order and argued that this Court may not entertain the prayer of the appellants because that will result in frustration of ring road scheme. He pointed out that the State Government had sanctioned the scheme not only for construction of ring road, but also for residential and commercial purposes and submitted that a portion of the ring road has already been completed after taking possession of the acquired land from other landowners and obtaining loan from the financial institutions. Shri Sagar emphasized that the plots on which 'A' class construction had been raised prior to the issue of notification under Section 36 were exempted from the scheme

and the appellants cannot claim parity because they constructed houses after the issue of notice under Section 36 or their constructions were not of 'A' class. Learned senior counsel argued that if smaller plots are exempted then the scheme will be jeopardized and the people of the area will suffer serious injury inasmuch as they will be deprived of the benefit of planned development of residential and commercial area. Shri Sagar submitted that the additional affidavit filed by the then Chairman of the Trust, Shri Jagroop Singh was rightly discarded by the High Court because one of his relatives was the writ petitioner and the sole object of the additional affidavit was to help him.

18. We have considered the respective submissions. Before examining the appellants' challenge to the scheme, we may notice order dated 16.09.2009 passed by the Division Bench of the High Court. The same reads as under:

“IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P. NO. 2570 OF 2004

Arun Kumar and others v. State of Punjab and others

Present: Mr. Ashok Singla, Advocate for the petitioner. Ms. Rita Kohli, Addl. A.G. Punjab, for the respondent No.1.

Mr. C.M. Munjal, Advocate, for respondent No.2 and 4.

None for respondent No.3

Learned counsel for Respondent No.1 submits that she has obtained instructions to state that the State Government would have no objection to the release of land which is subject matter of acquisition other than the land falling under the purported ring road and the berms appurtenant thereto.

In view of the above Mr. C.M. Munjal learned counsel representing respondents No.2 and 4 states that he would obtain instructions based on the statement made on behalf of respondent No.1.

Adjourned to 22.10.2009 so as to enable the learned counsel for respondents No.2 to 4 to obtain instructions. 16.9.2009.”

19. We may also mention that during the course of arguments, the learned counsel appearing for the appellants categorically stated that their clients do not want to

question the acquisition of land for the ring road and that their objection is mainly directed against utilization of the acquired land for commercial, residential and institutional purposes.

20. The question whether the policy framed by the State Government to grant exemption only to 'A' class constructions is constitutional is no longer res integra and must be treated as concluded by the judgments of this Court in *Sube Singh v. State of Haryana* (supra) and *Hari Ram v. State of Haryana* (supra). In *Sube Singh's* case, the Court considered the appellant's plea that the decision of the State Government not to exclude their property from acquisition was arbitrary and discriminatory inasmuch as the State Government had, in terms of the policy decision taken by it, excluded from acquisition 'A' class constructions. The State Government justified the exclusion only of 'A' class construction by asserting that the nature of construction constituted a rational ground for making a distinction between various parcels of land for the purpose of grant of exemption. While rejecting the plea of the State, this Court observed:

“It remains to be seen whether the purported classification of existing structures into A, B and C Classes is a reasonable classification having an intelligible differentia and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle, then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition, it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of A Class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the lands proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with RC roofing, mosaic flooring, etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan.

On the facts and circumstances of the case revealed from the records, we are persuaded to accept the contention raised on behalf of the appellants that the rejection of the request of the appellants for exclusion of their land having structures on them was not based on a fair and reasonable consideration of the matter. We are of the view that such action of the Government is arbitrary and discriminatory.”

21. In Hari Ram’s case, the Court noted that prior to 26.10.2007, the Government did not have a uniform policy for withdrawal from acquisition and observed:

“As regards the guidelines provided in the Letter dated 26-6-1991, this Court has already held that classification on the basis of nature of construction cannot be validly made and such policy is not based on intelligible differentia and a rational basis. What appears from the available material is that for release of the lands under the subject acquisition, no policy has been adhered to. This leads to an irresistible conclusion that no firm policy with regard to release of land from acquisition existed.

It is true that any action or order contrary to law does not confer any right upon any person for similar treatment. It is equally true that a landowner whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition but where the State Government exercises its power under Section 48 of the Act for withdrawal from acquisition in respect of a particular land, the landowners who are similarly situated have a right of similar treatment by the State Government. Equality of citizens' rights is one of the fundamental pillars on which the edifice of the rule of law rests. All actions of the State have to be fair and for legitimate reasons.

The Government has obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition whose lands have been acquired under the same acquisition proceedings. The State Government cannot pick and choose some landowners and release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power under Section 48 of the Act in respect of persons similarly situated relating to the same acquisition proceedings and for the same public purpose is definitely violative of Article 14 of the Constitution and must be held to be discriminatory.”

22. By applying the ratio of the above noted judgments to the facts of these cases, we hold that one of the reasons assigned by the State Government for not excluding the appellants' land from acquisition, namely, the quality of construction was irrelevant and extraneous and the High Court committed serious error by rejecting the appellants' plea that the respondents had discriminated them in the matter of grant of exemption from acquisition.

23. We shall now consider whether the State Government was justified in rejecting the recommendations made by the Trust for adjustment of the small plots subject to payment of the requisite fee/charges. Section 72-E of the Act which was invoked by the Secretary for partial annulment of resolution dated 1.1.2002 reads as under:

“72-E Power of State Government and its officers over trust -

(1) The State Government and Deputy Commissioners acting under the orders of the State Government, shall be bound to require that the proceedings of trusts shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the trusts have authority.

(2) The State Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons, which would in its opinion justify an order by the Deputy Commissioner under section 72-B.

(3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rules made in this behalf by the State Government.”

24. A reading of the above reproduced provision makes it clear that in terms of Section 72-E(1), the State Government is duty bound to ensure that the proceedings of the Trusts remain within the bounds of law. The Deputy Commissioners, on being ordered by the State Government are also under an obligation to ensure that the proceedings of the Trusts coming within their jurisdiction are in conformity with the law and the rules made under various enactments. Section 72-E (2) lays down that for performance of its duty under Section 72-E (1), the State Government can exercise all the powers including annulment or modification of any proceeding of the Trust which may, in its

opinion, be not in conformity with law or the rules framed thereunder or which would in its opinion justify an order by the Deputy Commissioner by virtue of exercise of such power as may be conferred upon him by the rules made in this behalf by the State Government.

25. Though the plain language of Section 72-E does not postulate grant of hearing by the State Government or the Deputy Commissioner, as the case may be, to those who may be affected by modification or annulment of the resolution passed by the Trust, but the rules of fairness require that while modifying or setting aside the resolution passed by the Trust, the State Government or the Deputy Commissioner, as the case may be, must give some indication of the application of mind by recording reasons, howsoever, briefly. If the order passed under Section 72-E represents inscrutable face of the sphinx, the Court is entitled to infer that the concerned authority had either not considered the relevant records or not applied mind to the rationale of the decision taken by the Trust or the recommendations made by it.

26. A reading of order dated 15.1.2002 passed by the Secretary does not show that the concerned officer had considered the pros and cons of the resolution passed by the Trust for adjustment of the smaller plots and then decided to partially annul the same. Therefore, the High Court should have quashed the order passed under Section 72-E of the Act and directed the State Government to decide the matter afresh. Its failure to adopt that course has resulted in manifest injustice and adversely affected the the appellants

27. If the recommendations made by the Trust are considered in the light of the fact that the appellants had already constructed their houses and a statement was made on behalf of the State Government before the High Court that it has no objection to the release of the plots other than those falling under the ring road and the berms appurtenant thereto, it becomes clear that the Secretary had arbitrarily cancelled that part of the resolution of the Trust.

28. An additional fact of which cognizance deserves to be taken is that the scheme framed by the Trust was not only for construction of ring road but also for development of commercial, residential and institutional plots. It is difficult, if not impossible, to fathom any reason why the Secretary to the Government rejected the recommendations made by the President for exemption of the land belonging to small plot holders despite the fact that the acquired land was intended to be utilised not only for construction of ring road but also for development of commercial, residential and institutional plots, which would have been ultimately allotted to

other persons by draw of lots or by auction. How could there be a justification to demolish the residential houses of the appellants for providing commercial, residential and institutional plots to others? In our considered opinion, the decision taken by the Secretary was wholly arbitrary, unreasonable and unjustified and the High Court committed grave error by refusing to quash the same.

29. In view of the above conclusion, we do not consider it necessary to deal with the arguments advanced by learned counsel for the parties on the basis of the report submitted by the District Town Planner.

30. As a sequel to the above discussion, the appeals are partly allowed, the impugned order is set aside and the State Government and the Trust are directed to exclude the appellants' land from the scheme except to the extent the same is required for constructing the ring road. The concerned officers of the Trust are directed to take appropriate action in this regard within a period of three months from the date of receipt/production of a copy of this order.