

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 23.01.2015

C.W.P.No.14321 of 2009

Harjeevan Kaur Garewal & others

...Petitioners

Versus

State of Punjab & others

...Respondents

Present: Mr. K.L.Kohli, Advocate, for the petitioners.

Mr. Manoj Bajaj, Addl. AG, Punjab, for respondent Nos.1 & 2.

Mr. Anil Sharma, Advocate, for respondent No.3.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

HEMANT GUPTA, J.

The petitioners were owners of land measuring 57 kanals 10 marlas situated on the Pakhowal Road adjoining Canal Rest House, Ludhiana. The said land was acquired in March, 1975 by the Ludhiana Improvement Trust (for short 'the Trust') for implementing 8.4 acres scheme for residential purposes. The claim of the petitioners in the present writ petition is for issuance of writ of mandamus for allotment of 5 plots to the petitioners as local displaced person, as per their entitlement in terms of the Ludhiana Improvement Trust Land Disposal Rules, 1964 (for short 'the 1964 Rules') applicable at the time of acquisition.

The petitioners claim that they are 'local displaced person'

within the meaning of Rule 2(b) of the 1964 Rules. The said Rules

contemplate that any person, whose land has been acquired, would be a local displaced person and the Trust shall fix a concessional price at which land comprised under the scheme will be sold to every individual and local displaced person and that not more than one plot of land when demarcated into plots shall be sold to a local displaced person keeping in view the land acquired. It is also averred that in terms of the said Rules, the respondents were required to invite applications from the local displaced persons for allotment of a plot to every individual land holder, but the Trust never issued any such notice or letter inviting applications. It is also averred that the Rules framed by the State under Section 73 of the Punjab Town Improvement Act, 1922 (for short 'the Act') such as Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975 (for short 'the 1975 Rules') do not repeal the Ludhiana Improvement Trust Land Disposal Rules, 1964 and such Rules being prospective are applicable to the land acquired after 18.09.1975. It is also pointed out that the Punjab Government framed Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983 (for short 'the 1983 Rules') repealing 1975 Rules, but 1964 Rules were not repealed even at that stage. It is pointed out that the condition in the 1983 Rules that local displaced person having a joint khata being co-sharers shall be allotted only one plot is not tenable. It is also pointed out that such condition was set aside by the Full Bench of this Court in a judgment rendered in CWP No.2575 of 2009 titled 'Jarnail Singh & others Vs. State of Punjab & others' decided on 01.10.2010. Thus, it is contended that the petitioners are entitled to 5 plots, being co-sharers in the land acquired, as local displaced persons.

It is also come on record that the petitioners made a request for allotment of plots as local displaced persons on 17.08.1988 (Annexure P-3).

A perusal of the record further shows that vide communication dated 19.01.1989 (Annexure P-4), the petitioners were offered 5 flats in the 8.4 Acre Development Scheme, as local displaced persons, but such offer was not accepted by the petitioners and they sought independent plots for each of the co-sharers. Thereafter, the petitioners filed a writ petition bearing CWP No.13980 of 1994 before this Court, which was disposed of with a direction to decide the representation of the petitioners by passing a speaking order on 30.09.1994. When the said order was not complied with, the petitioners filed a contempt petition bearing COCP No.991 of 1995. In the said contempt petition, while discharging rule on 13.02.1997, it was noticed that the Trust vide letter dated 09.08.1994 communicated to the State that the petitioners are entitled to 5 plots in view of their land acquired and that the Trust was directed to allot plots accordingly. In appeal against the said order, the Hon'ble Supreme Court found that the letter dated 19.08.1994 could not be taken as a decision of the Trust to allot one plot to each of the joint holder in the khata and the findings recorded in the contempt petition are without any basis. It was held that the correspondence exchanged between the State Government and the Chairman of the Improvement Trust could not be treated as a decision taken by the Trust to allot five plots. It was observed that host of questions would arise such as whether the application filed by the respondents (petitioners herein) in the year 1988 was within time?; whether the respondents (petitioners herein) would be entitled to plots or flats?; whether they would be entitled to one plot/flat being the joint holders of the khata or to separate plots/flats (one each) as claimed by them; Whether any applications were invited by the Trust from the local displaced persons in accordance with the 1964 Rules; and as to which of the Rules of 1964, 1975 or 1983 would apply as respondents (petitioners herein) had filed the

representation in the month of 1988 for the first time. Thus, the order of this Court was set aside vide judgment dated 04.02.2004.

Thereafter, the petitioners again sought allotment of plots vide communication dated 15.04.2004. Pursuant to such representation, the Improvement Trust submitted its response on 25.07.2008 (Annexure P-17). It is, thereafter, the petitioners again invoked the writ jurisdiction of this Court by way of present writ petition.

In reply to the writ petition, the stand of respondent Nos.1 & 2 is that local displaced person is entitled for one plot under the scheme and that too when demarcated into plots. It is pleaded that no plotting was done under the said Scheme; therefore, no plot was available with the Ludhiana Improvement Trust for allotment to the petitioners. It is also pleaded that the 1983 Rules are applicable, as the State Government has issued a circular on 19.05.2006 to the effect that the applications received from 22.12.1983 onwards are to be considered and disposed of under the 1983 Rules. Under the said Rules, the joint owners are entitled to only one plot. It is also pointed out that it is for the Improvement Trust to take a decision.

In a separate reply filed on behalf of the Trust, it is pointed out that the Trust has taken possession on 18.06.1979 and has constructed flats on the said land. No plotting was done by the Trust and as such no plot is available with the Trust. It was from 26.12.1985 to 02.01.1986, the petitioners applied for allotment of plots after depositing Rs.500/- each. It is also pointed out that the State Government has taken a decision that the applications received from 22.12.1985 would be considered under the Punjab Improvement Trust (Utilisation of Lands and Allotment of Plots) Rules, 1983. It is also pointed out that the Trust has proposed the State Government for

allotment of flats to the petitioners available under the Scheme, if not, then in any other scheme while giving relaxation.

Before this Court, learned counsel for the petitioners has vehemently argued that since the land was acquired in the year 1975, when 1964 Rules were applicable, therefore, the claim of the petitioners for allotment of plots has to be considered under the said Rules only. Learned counsel for the petitioners relies upon a Division Bench judgment in CWP No.940 of 2007 titled 'Ranjit Kaur Vs. State of Punjab & another' decided on 23.07.2008 as well as Single Bench judgments in Jagdish Rai Vs. State of Punjab 1994 (3) RRR 53; CWP No.2190 of 1984 titled 'Smt. Pritam Kaur Grewal & others Vs. The Improvement Trust, Ludhiana & others' decided on 30.08.2006; and CWP No.7978 of 1998 titled 'Rajinder Kaur Vs. State of Punjab & another' decided on 04.08.2009, to contend that 1964 Rules, which are applicable on the date of publication of the notification under Section 36 of the Act, alone would be applicable.

Having heard learned counsel for the parties at length, we do not find any merit in the present writ petition.

The 1964 Rules were framed by the Ludhiana Improvement Trust in exercise of the powers conferred under Section 74 of the Act, whereas the 1975 Rules have been framed by the State Government in exercise of the powers conferred under Section 73 of the Act. Section 73 and 74 of the Act read as under:

“73. Power of State Government to make rules – (1) In addition to the power conferred by section 64, the State Government may make rules consistent with this Act and applicable to all trusts or any trust –

- (i) as to the authority on which money may be paid from the trust funds;

- (ii) for fixing the fees payable for copies of or extracts from the municipal records furnished to the chairman under section 39;
- (iii) as to the manner of constitution of Trust Services, the recruitment and conditions of service of members of such Services and the recruitment and conditions of service of other servants of the trusts.
- (iv) as to the intermediate office or offices (if any) through which correspondence between the trust and the State Government or officers of the Government shall pass;
- (v) as to the accounts to be kept by the trust, as to the manner in which such accounts shall be audited and published and as to the powers of auditors in respect of disallowance and surcharge;
- (vi) as to the authority by whom, the conditions subject to which and the mode in which contracts may be entered into and executed on behalf of the trust;
- (vii) as to the preparation of estimates of income and expenditure of the trust and as to the authority by whom and the conditions subject to which such estimates may be sanctioned;
- (viii) as to the returns, statements, and reports to be submitted by trusts;
- (ix) to prescribe and define the mutual relations to be observed between the trust and other local authorities in any matter in which they are jointly interested;
- (x) for regulating the grant of leave of absence, leave allowances and acting allowances to the officers and servants of the trust and of the tribunal;
- (xi) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers in the service of the trust or of the tribunal (other than any servant of the Government in respect of whom a contribution is paid under section 94) to contribute to such fund at such rates and subject to such conditions as may be prescribed by such rules and for supplementing such contributions out of the funds of the trust;

Provided that a servant of the Government employed as officer or servant of the tribunal shall not be entitled to leave or

leave allowances otherwise than as may be prescribed in any general or special orders of the Government.

(xii) for determining conditions under which the officers and servants of the trust or of the tribunal, or any of them, shall on retirement receive gratuities or compassionate allowances; and the amount of such gratuities and compassionate allowances;

(xiii) generally for the guidance of trust and public officers in all matters connected with the carrying out of the provisions of this Act;

(xiv) for regulating the grant of subsidies to trusts by the State Government, the conditions under which they may be earned or forfeited and the arrangements for their payment.

(xv) for regulating any other matter which is required to be or may be prescribed.

(2) All acts authorized or enjoined under this Act shall be held to be authorized or enjoined subject to such rules.

74. Power of the trust to make rules – Every trust may from time to time with the previous sanction of the State Government make rules consistent with this Act and with any rules made under this Act by the State Government –

(i) for fixing the amount of security to be furnished by any officer and servant of the trust from whom it may be deemed expedient to require security;

(ii) for associating members with the trust under section 13;

(iii) for appointing persons (other than trustees and persons associated with the trust under section 13) to be members of committee under section 14;

(iv) for regulating the delegation of powers or duties of the trust to committees or to the chairman;

(v) for the guidance of persons employed by it under this Act;

(vi) for fixing the fees payable for copies of documents delivered under sub-section (3) of section 36 or under section 75;

(vii) for the management, use and regulation of dwellings constructed under any scheme under this Act;

(viii) generally for carrying out the purposes of this Act.”

A Division Bench of this Court in a judgment reported as Sheo Wanti Vs. State of Punjab (2002) 3 RCR (Civil) 262 has held that the power of the Trust to frame Rules under Section 74 of the Act is subservient to the provisions of the Act and the Rules framed by the State Government and that in case of a conflict between the Rules framed by the Trust and the Government, the Rules under Section 73 shall have an over-riding effect. The Bench held to the following effect:

“9. A perusal of Section 73 of the Punjab Town Improvement Act, 1922 shows that the State Government has been given the powers to make the Rules. The power of the Trust under Section 74 is subservient to the provisions of the Act and the Rules framed by the State Government. In case of a conflict between the Rules framed by the Trust and the Government, the Rules under Section 73 shall have an over-riding effect. It is the admitted position that the State Government has framed Rules under Section 73. The Rules framed by the Trust have to conform to the requirements of the Rules framed by the State Government. In case of a conflict, the Rules framed by the State Government have to prevail. Resultantly, the petitioner is not entitled to claim any benefit under the 1964 Rules.”

Section 74 of the Act empowers the Trust to frame Rules with the previous sanction of the Government consistent with the Act and the Rules made under the Act by the State Government. Therefore, Rules framed by the Trust, if inconsistent with the State Rules, would be ineffective. The State has framed the 1975 Rules after 1964 Rules were framed by the Trust. The definition of local displaced person under 1964 Rules and 1975 Rules is materially different. Such definition reads as under:

1964 Rules	1975 Rules
Local Displaced person – means a person whose land has been acquired by the Trust for the execution of any scheme under	Local Displaced Person - means a person who is the owner of a property acquired by the Trust for the execution

the Punjab Town Improvement Act, 1922.	of a Scheme and has been such owner for a continuous period of two years immediately before the first publication of the Scheme by the Trust under Section 36 of the Punjab Town Improvement Act, 1922.
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Though the petitioners satisfy the test of being local displaced person under both set of Rules, but the procedure and eligibility is different in 1975 and 1983 Rules. In view of the judgment in Sheo Wanti’s case (supra) and keeping in view the provisions of Section 74 of the Act, the 1975 Rules or 1983 Rules would be the Rules to consider the request of the land-owners for allotment of plots to the extent such Rules are inconsistent with 1964 Rules.

In none of the judgments referred to by the learned counsel for the petitioners, the decision of the State Government dated 19.05.2006, as appended with the written statement, was brought to the notice or considered. The relevant extract from the communication dated 19.05.2006 reads as under:

“Subject: Guidelines for disposal of pending applications received under L.D.P. category for allotment of plot.

Despite issuance of instructions vide Memo No.5/245/95-2LG2/6195-96 dated 02.05.1995, No.5/245/95-2LG2/19573-74, dated 16.12.1999 and various other letters issued in individual references received from Improvement Trusts, on the subjected noted above, reports received from Improvement trusts indicate that large number of applications are still pending for want of final decision/order. The delay in disposal of pending applications has not only caused under harassment to applicants, but the Government has to also unnecessarily face embarrassing situation in Courts. Therefore, it has become imperative to dispose of all pending

cases without any further delay, and in a time bound manner. In supersession of all the instructions on the subject noted above, it is directed that the Improvement Trusts will decide all pending applications by following the below mentioned guidelines:-

- (a) In those Trusts where there were no statutory rules to deal with the applications received under the L.D.P. category prior to the enforcement of Utilization of land and allotment of plots by Improvement Trust Rules, 1975, the applications shall be decided as per the provisions of Utilization of land and allotment of plots by Improvement Trust Rules, 1975. However, if the concerned Trust had duly framed and notified its own rules in this respect, the applications shall be considered and disposed of strictly as per those rules;
- (b) Applications received from 22.12.1983 onwards are to be considered and disposed of under the Punjab Improvement Trust (Utilization of lands and allotment of plots) Rules, 1983;
- (c) Applications, which are ultimately rejected, a well reasoned and speaking order mentioning the grounds of rejection, is required to be passed in each case and a copy thereof has to be sent to the applicant as per registered post at his address given in the application. In the event the registered letter is received unserved, intimation is required to be given by publishing a public notice in the newspaper widely read in the area.

2. You are requested to process all the pending applications as per above guidelines, place the cases in the Trust meetings and send the resolution to Government for approval.

3. As this work is required to be completed in a time bound manner, you are requested to ensure that all cases are considered in meetings of the Trust by 30th June, 2006 positively. A certificate may be sent to Government under your signatures by 5th July, 2006 that all applications received under the LDP category have been disposed of as per guidelines given in this letter.”

Ranjit Kaur's case (supra), relied upon by the learned counsel for

the petitioners, arises out of its own facts. In the said case, 7 co-sharers were

allotted plots, whereas the 8th co-sharer i.e. the petitioner in the said writ petition was not allotted plot. The context in which judgment was given is materially different than the present case. One line out of context cannot be read to mean that the Rules as are applicable on the date of acquisition would apply.

The petitioners have applied for allotment of plots as per the averments made in the written statement in December, 1985 – January, 1986 that is after 1983 Rules were promulgated. Such applications were submitted after more than 12 years of acquisition of land. The Improvement Trust did not invite applications as required under the 1964 Rules nor the petitioners applied for the plots within a reasonable time of acquisition of their land. The petitioners did not apply for allotment of plots even after promulgation of 1983 Rules or in response to any advertisement. For the first time, the application was made in December, 1985 – January, 1986 and that too without any advertisement. A local displaced person in terms of 1983 Rules is entitled to residential plot on reserve sale price under the scheme under which the land of such person is acquired provided he applies for such allotment within a period of three years from the date of taking over the possession of his entire land. Still further, the mode of sale in terms of Rule 8 is by draw of lots and auction in respect of commercial plots. The applications are required to be invited in terms of Rule 11 by notice to be published in the newspapers widely circulated in the locality. Therefore, the request of the petitioners for allotment of plots without any advertisement could not be considered either in terms of 1964 Rules or 1983 Rules.

We find that the Rules, when the advertisement is issued inviting applications from the land-losers, alone would be applicable. To assert that the rights of the land-losers would be governed as on the date of publication

of the notification under Section 36 of the Act is not tenable for the reason that such date is relevant for determining the amount of compensation and not in respect of process of rehabilitation. The process of acquisition and the process of rehabilitation are two distinct processes, which are not inter-linked. Reference may be made to the Hon'ble Supreme Court judgment reported as Amarjit Singh & others Vs. Mewa Singh & others (2010) 10 SCC 43, wherein apart from the argument that the land pooling scheme framed under the Punjab Regional and Town Planning and Development Act, 1995 should be extended to the land acquired under the Land Acquisition Act, 1894, the Court observed as under:

“49. We must, in fairness to Mr. Gupta mention that he did not suggest that rehabilitation of the oustees was an essential part of any process of compulsory acquisition so as to render illegal any acquisition that is not accompanied by such measure. He did not pitch his case that high and in our opinion rightly so. The decisions of this Court in *New Riviera Coop Housing Society and Anr. v. Special Land Acquisition Officer and Ors.* 1996 (1) SCC 731 and *Chameli Singh and Ors. v. State of U.P. and Anr.* 1996 (2) SCC 549 have repelled the contention that rehabilitation of the property owners is a part of the right to life guaranteed under Article 21 of the Constitution so as to render any compulsory acquisition for public purpose bad for want of any such measures.

50. In *New Riviera's* case (supra) this Court held that if the State comes forward with a proposal to provide alternative sites to the owners, the Court can give effect to any such proposal by issuing appropriate directions in that behalf. But a provision for alternative sites cannot be made a condition precedent for every acquisition of land. In *Chameli Singh's* case (supra) also the Court held that acquisitions are made in exercise of power of eminent domain for public purpose, and that individual right of ownership over land must yield place to the larger public good. That acquisition in accordance with the procedure sanctioned by law is a valid exercise of power vested in the State hence cannot be taken to deprive the right to livelihood especially when compensation is paid for the acquired land

at the rates prevailing on the date of publication of the preliminary notification.

51. There is thus no gainsaying that rehabilitation is not an essential requirement of law for any compulsory acquisition nor can acquisition made for a public purpose and in accordance with the procedure established by law upon payment of compensation that is fair and reasonable be assailed on the ground that any such acquisition violates the right to livelihood of the owners who may be dependant on the land being acquired from them.

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56. In the completed acquisitions no provision regarding allocation to be made to the owners has been made. It is also not, in our opinion, feasible at this point of time to super impose the Land Pooling Scheme on the acquisition under challenge and make a provision for allocation to the owners in the sectors that are under development or those that have already been developed. The extent of area available in other sectors for such allotment and allocation is itself a matter regarding which there is no material before us. That apart even when the number of appellants before us is limited, any direction for rehabilitation based on a retrospective operation of the scheme would deprive owners of the benefit of such scheme only on account of their acceptance of the acquisition proceedings.”

Apart from the reasons recorded therein, we find that 1964 Rules contemplated inviting of applications for allotment of plots. Admittedly, no advertisement was issued inviting applications for the allotment of plots. Therefore, in the absence of any advertisement, the petitioners cannot seek allotment of plots. No plot can be allotted to any individual without giving opportunity to all the eligible applicants to apply for a plot and to be considered alongwith other eligible applicants. Reference may be made to Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh & others (2011) 5 SCC 29 and Civil Appeal No.2143 of 2007 titled 'Institute of Law & others Vs. Neeraj Sharma & others' decided on 19.09.2014.

In the present case, though the notification under Section 36 of the Act was issued prior to promulgation of 1975 Rules, but the fact remains that the petitioners applied for plots after more than 12 years of the acquisition of their land and even after the promulgation of 1983 Rules. The land-owners whose land stands acquired have a right of consideration of allotment of plots in terms of the schemes framed. They have no vested right for allotment of plots only for the reason that their land stands acquired.

Still further, the Trust under the scheme has not carved out any plot for sale. The Trust has constructed multi-storey flats. The petitioners are not entitled to plots only because the Rules contemplate allotment of a plot. If the plots are not carved out under a Scheme for which the land was acquired, the land-owners cannot claim allotment of a plot to be carved out especially for them. It will defeat the very public purpose for which the acquisition was carried out. The land is not acquired for the benefit of the land-owners, but for a larger public purpose. Therefore, in the absence of any stipulation in the scheme to demarcate the plots, the petitioners could not claim plots and that too without submitting application in response to an advertisement published.

The respondents have offered 5 flats to the petitioners, but such offer has not been accepted by the petitioners. Even if the flats are to be substituted for the plots under the 1964 Rules, but again such flats could not be allotted to the petitioners without public advertisement. 1983 Rules contemplate allotment of flats, though the same could be allotted in response to advertisement and that too within 3 years of the acquisition. Thus, the petitioners have lost right to seek allotment of flats by their conduct and also in terms of the 1983 Rules.

In view of the above discussion, we do not find any ground to issue any direction to the respondents to allot plots/flats to the petitioners as local displaced person. Consequently, the present writ petition is dismissed.

(HEMANT GUPTA)
JUDGE

23.01.2015
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(HARI PAL VERMA)
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