IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP No.13187 of 2015

Date of Decision: 17.09.2015

Neera Arora & others …Petitioners

Versus

State of Punjab & others …Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. A.P.S.Sandhu, Advocate, for the petitioners.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the notifications dated 08.10.1975 (Annexure P-10) and 29.09.1978 (Annexure P-13) issued under Sections 36 and 41 of the Punjab Town Improvement Act, 1922 (for short 'the Act') respectively, having lapsed by virtue of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short 'the 2013 Act').

One Roshan Lal son of Kishan Chand was owner of House No.21, Race Course Road, Amritsar falling in Khewat/Khatauni No.405/473, Khasra No.2274, measuring 2 Kanal 13 Marla. After the death of Roshan Lal, his legal heirs sold the property to Smt. Indravati vide registered sale deed dated 20.06.1972. The petitioners herein are the legal heirs of Smt. Indravati. It is pointed out that a notification under Section 36 of the Act was published on 08.10.1975 (Annexure P-10), which was followed by notification dated 29.09.1978 (Annexure P-13) issued under Section 41 of the Act. The Award in respect of such notifications was announced on 22.09.1986 (Annexure P-28).

The argument of learned counsel for the petitioners is that possession of small area measuring 125 sq. yards was taken in the year 1993 and later some other area i.e. 186 sq. yards, whereas the petitioners continued to be in possession of the remaining land. It is contended that some of the land-owners have filed writ petition before this Court such as CWP No.2124 of 1993, which is now fixed for 03.12.2015. Since the petitioners continued to be in possession nor compensation has been offered to the petitioners, the proceedings shall be deemed to be lapsed in terms of Section 24(2) of the 2013 Act.

Though the question; as to whether the provisions of 2013 Act would be applicable to the proceedings of land acquisition under the Punjab Town Improvement Act, 1922 are pending consideration before this Court, but the said question need not be examined in the present writ petition. In compliance of the order dated 06.01.2004 passed in CWP No.2124 of 1993, the Government has considered the issue of release of land acquired for scheme known as 'Improvement and Widening of Chowk Dasondha Singh – Jail Road and Race Course Road' vide order Annexure P-25. A perusal of the said order shows that the scheme was approved by the Trust on 12.12.1974 in respect of land measuring 3.33 acres. It was noticed that only 2 acres of land was required to be acquired, as the remaining land already vested with the Trust. The amount of compensation was deposited with the Land Acquisition Collector on 16.12.1992 and 12.02.1993 and the possession delivered to the Improvement Trust on 23.02.1993. It has been noticed that the Improvement Trust developed Chowk. In three writ petitions filed, wherein the land measuring 4 Kanal 14 Marla was the subject matter and that this Court had stayed further construction. Three land-owners, who were before this Court, subsequently submitted representation without prejudice to their rights that if the land has become surplus after implementation of the scheme, it should be reverted to them. On 24.07.1995, the Improvement Trust resolved that the land becoming surplus may be reverted to the land-owners subject to the conditions contained therein. One of the conditions was to give an undertaking not to claim any compensation and to withdraw case pending before this Court. No undertaking was furnished, but request for exemption was received in respect of owners of land measuring 545.05 sq. yards; 45 sq. yards and 532.05 sq yards comprising in khasra No.2275. Thereafter, the Improvement Trust passed a resolution on 29.06.2001 that in the event the request for grant of exemption is approved, the land-owner shall be required to pay development charges at the rate of Rs.1000/- per square yard. Subsequently, the Improvement Trust sent a request for exemption of the land including 1269.79 sq. yards comprising in Khasra No.2274. Considering the said communication, the State Government found that the Land Acquisition Collector after taking possession of the acquired land has delivered the unencumbered vacant possession to acquiring department i.e. Improvement Trust, Amritsar on 22.02.1993 and there is no provision in the Act to revert the land to the erstwhile owners after the land acquisition process stands completed. It was also found that out of 4225 sq. yards of land acquired for the scheme, 212 sq. yards is under Chowk, 697 sq. yards is under footpath/ pavements and 506 sq yards has been earmarked in the proposed plan for commercial use i.e. for the construction of booths and that 2589 sq. yards has been allocated for parking and footpaths in front of the booths proposed to be constructed. It was specifically mentioned that no request has been received for exemption except in respect of Khasra Nos.2287 and 2275. The relevant extract of the said order reads as under:

> "……..It clearly shows that no undertaking/request for exemption has been received from the owners in respect of large portion of area proposed to be exempted under the scheme. Obviously, the benefit/commercial advantage accruing to various land owners under this proposed exemption is neither proportionate nor commensurate with the area acquired or proposed to be exempted. Thus, the earlier Government decision dated 20.12.2011 approved in principle for exemption of the land has become infructuous.

Further, there is no denial of the fact that scheme filed as 'Improvement and Widening of Chowk Dasondha Singh – Jail Road and Race Course Road' was prepared in the large public invest and the same stands finally approved by the Government on 20.09.1978. The layout of the scheme bearing No.ASR-1251/174 dated 12.12.1974 was finalized as per the requirements. There is repaid increase in the population as well as in the number of vehicles. The scheme was implemental about 20 years back. Therefore, the roundabout/chowk and roads carved out as per lay out dated 20.12.1974 definitely now require further development/widening to bear the increased traffic volumes. Moreover, the earlier decision in Government Memo No.3/18/96-4LG2/16146 dated 20.12.2001 has become infructuous as discussed in the preceding paragraph. Therefore, the land cannot be reverted and permitted to be used for commercial purpose. Accordingly, neither the law nor the public interest permit the grant of any exemption of the land already acquired for public purpose in due course. As such, the resolution at AIT under reference being contrary to the law and public interest is hereby annulled……"

Since the Scheme stands implemented as noticed by the State Government and no request for exemption was ever made by the petitioners, we do not find that any case is made out to intervene in the land vesting with the Improvement Trust at this stage. Admittedly, the petitioners have voluntarily surrendered part of the acquired land. Therefore, the conduct of the petitioners in not raising any dispute or even seeking exemption from acquisition since the year 1993, when possession was taken, shows that they have no grievance in respect of utilization of the land for the purpose of the Scheme.

Consequently, we do not find any merit in the present writ petition. The same is dismissed.

(HEMANT GUPTA)
JUDGE

17.09.2015 **(SNEH PRASHAR)**
Vimal **JUDGE**