HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

(1) CWP No.19191 of 2014 (O&M)
Date of Decision: 27.11.2015

****

Ahbaab Singh Grewal & Ors. . . . . Petitioners

VS.

State of Punjab & Ors. . . . . Respondents

****

(2) CWP No.21552 of 2014 (O&M)

***

Satpal Singh Bajwa & Ors. . . . . Petitioners

VS.

State of Punjab & Ors. . . . . Respondents

***

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE JASPAL SINGH

****

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

***

Present: Mr. Sumeet Mahajan, Senior Advocate, with
Mr. Hitesh Ghai, Advocate and
Mr. Amit Kohar, Advocate for the petitioners

Mr. Rajesh Bhardwaj, Addl. AG, Punjab

Mr. Rupinder S. Khosla, Senior Advocate with
Mr. K.S. Mamrat, Advocate, for respondent No.4

Mr. Vinod S. Bhardwaj, Advocate for respondent Nos.5&8

Mr. Kuldeep Joshi, Advocate for
Mr. Harsh Aggarwal, Advocate, for respondent No.6.

Mr. G.S. Attariwala, Advocate, for respondent No.10

****

SURYA KANT, J.

(1) This order shall dispose of CWP Nos.19191 & 21552 of 2014 as the point in issue in both the cases is common. For brevity, the facts are being taken from CWP No.19191 of 2014.

(2) Five petitioners in this case are residents of Sarabha Nagar, Gurdev Nagar and Baba Farid Avtar Nagar at Ludhiana city. They have filed the instant writ petition purportedly for a common cause to direct the respondents "*not to go ahead with the proposed project called "Ludhiana Down Town, Sarabha Nagar, opposite Punjab Agriculture University, Ferozepur Road, Ludhiana" by utilizing the land of two Power Colonies belonging to Punjab State Power Corporation Ltd.*". This would, according to the petitioners, pose a grave danger to the environment as 800 fully grown up trees are to be uprooted along with countless shrubs and plants. They further seek a mandamus to direct the respondents not to go ahead with any Mega Project such as Mall, Multiplex etc. as the same would cause traffic congestion and environmental degradation in the already densely populated Ludhiana city. Another direction sought by them is to identify the sites and develop parks, green-belts and playgrounds etc. for the increase the of green cover in Ludhiana city. The petitioners have sought yet another direction to restrain the respondents from selling the old Kachheri Complex (Old Court Complex) to any private builder/person and to maintain the same as a open public park/green-belt.

(3) The core issues raised in the writ petition and argued before us revolve around the decision taken by the State Government in association with Greater Ludhiana Area Development Authority (GLADA) and Punjab State Power Corporation Ltd. (PSPCL) to

utilize the land measuring 32 acres comprising two residential colonies (10.22 acres and 21.07 acres) located on Ferozepur Road, to develop the project called as 'Ludhiana Down Town'.

(4) The State Government in a meeting held on 13.08.2013 and chaired by Deputy Chief Minister, Punjab (P3) decided to execute the "Ludhiana Down Town Project". The total area involved in the project is approximately 100 acres out of which two chunks of land i.e. 10.82 acres and 21.07 acres are owned by PSPCL.

(5) On the first parcel of its land, PSPCL has constructed offices and 16 residences of Group A officials while on the other piece of land, there are 600 houses of Group B, C & D employees. The entire project-land was decided to be handed over to GLADA. It was further resolved to construct a Multi-Storied Apartment Building on a part of the vacated land to house the PSPCL office and the employees will be shifted to rented accommodation for which the rent shall be paid by GLADA. The decision taken on 13.08.2013 further explains that ***"this project will be undertaken under 80:20 scheme prepared by the Housing and Urban Development Department. 80% proceeds from the project will be utilized for financing the equity of Mukeria Power Project".***

(6) The petitioners have also highlighted issues relating to traffic congestion, excessive pollution, haphazard large-scale commercial constructions in Ludhiana city besides highlighting the concern expressed by the World Health Organization as Ludhiana is

the 48^{th} most populated city in India as per 2011 Census. It is thus averred that the green-belts, open spaces, mature trees, shrubs and plants are the sacrosanct lifeline of Ludhiana and ought not to be destroyed for a commercial project like 'Ludhiana Down Town'.

(7) The petitioners have in their rejoinder dated 23.03.2015 taken yet another legal plea regarding violation of the 'Development Scheme' notified under the Punjab Town Improvement Act, 1922 as well as Section 43 thereof. In fact, this was the principal contention raised by their learned counsel at the time of final arguments. In the connected case of course, the above-mentioned plea has been specifically averred in the writ petition itself.

(8) Petitioners have explained that vide notification dated 17.03.1961 issued under Section 36 of the Town Improvement Act, 1922 (in short, 'the 1922 Act'), the Improvement Trust proposed to frame a Development Scheme known as "Kartar Singh Sarabha Nagar Part-I & II Development Scheme". The State Government vide notification dated 18.01.1963 accorded sanction to the Scheme in exercise of its powers under Section 42(1) of the 1922 Act. The lay out plan of 'Kartar Singh Sarabha Nagar' as sanctioned on 15.01.1971 (P9) reveals that two parcels of land were reserved for the Punjab State Electricity Board (now PSPCL) where they later on constructed their offices and residential colonies. Another piece of land was reserved for PSEB and Grid Station. The land use of the notified scheme has not been got changed by the respondents till

date. No amendment in the Scheme is carried out, therefore, the impugned project proposing to utilize the PSEB land for a purpose other than for which it was reserved under the scheme, is *ex facie* illegal and cannot sustain. It is further maintained that the respondents cannot amend or alter the Notified Development Scheme without following the prescribed procedure, namely, publication of draft scheme, inviting objections from general public and finalization of such scheme after consideration of the objections. Section 43 of the 1922 Act as construed by this Court in some reported decisions, has also been cited.

(9) On the other hand, respondent-GLADA has questioned the very *bona fide* of petitioners, as according to it, the writ petition is a proxy war at the instance of employees/officials of PSPCL who are occupying the residential quarters at the site. It is pointed out that PSEB the Joint Forum of Employees' had earlier approached this Court in CWP No.27895 of 2013 challenging the decision of State Government in transferring the land to GLADA and this Court vide order dated 14.01.2014 upheld that decision and dismissed the writ petition, though, with a direction to the authorities to arrange alternative residential accommodations for the affected employees. The said decision was unsuccessfully challenged before the Supreme Court and the SLP was declined. On merits, firstly it is maintained that the Ludhiana Down Town is a prestigious project and 80% of its proceeds shall be utilized for financing equity in Mukerian Power

Project which is being established by the Power Corporation in public interest. It has been denied that there is any violation of provisions of 1922 Act. Various provisions of the Punjab Regional and Town Planning and Development Act, 1995 are cited to contend that the 1922 Act has become obsolete and comprehensive urban development planning of existing or the expanded areas is now regulated under the 1995 Act. The writ petition is stated to be wholly premature as GLADA is obligated to follow the statutory procedure contemplated under the 1995 Act, before executing any development project. The *locus standi* of petitioners is also questioned as neither they are owners of the subject land nor have any direct or indirect concern with it.

(10) It is further claimed that the subject land is not a part of the 'Kartar Singh Sarabha Nagar Development Scheme' as it was taken out by the Improvement Trust and given to erstwhile PSEB for the setting up of offices and residential colonies. Hardly, 10 to 12% land is under construction and the rest of area is lying vacant. Since this land adjoins to approximately 70 acres land owned by the State Government/GLADA, that an ambitious project like 'Ludhiana Down Town' has been conceptualized without compromising on the issues like water conservation, green-belt, natural habitat, protection of water bodies. It was pointed out that only about 20% land is proposed to be utilized for the execution of subject-project and the rest of major chunk is earmarked for artificial water bodies, green-

belt, leisure valley (park), green areas. It is maintained that since the project is aimed to generate revenue for 'Mukerian Power Project' to cater the needs of general public, it is not a profit oriented, rather is a developmental and service-oriented project.

(11) We heard learned counsel for the parties at a considerable length and gone through the record.

(12) The foremost issues which arise for consideration are:-

(i) whether the land measuring about 32 acres of PSPCL is an integral part of "Kartar Singh Sarabha Nagar Development Scheme? and if so,

(ii) whether the decision of the State Government and PSPCL, to transfer that land to GLADA for completion of 'Ludhiana Down Town Project' is violative of 1922 Act? and

(iii) whether there is any conflict between the Legislative Policies of the 1922 Act and the 1995 Act, and if so, to what effect?

(13) Firstly, a brief reference to the facts may be made. Ludhiana Improvement Trust vide notification dated 06.03.1961 framed a Scheme known as 'Teachers Colony Scheme' under Section 24 read with Section 28(2) of the 1922 Act "for the area measuring approximately 300 acres" along with broad description of the area in the notification. The Punjab Government in exercise of its powers under Section 41(1) of the 1922 Act sanctioned that scheme vide

notification dated 18.01.1963 and Clause (2) of the said Notification empowered the Trust to acquire the area in question or any part of it in accordance with the provisions of Land Acquisition Act, 1894. Part-II of the notification dealing with "Reservation and Designation of Land for Use", provided that "*the whole of the area covered by the scheme is proposed to be acquired laid out and developed for residential purposes but the places dedicated for religious and for charitable purposes may not be acquired and the buildings and other property not likely to interfere with layouts of the area and covered by the provisions of Section of the Act, may be released and exempted from acquisition*". The 2nd part of clause-IV containing miscellaneous provisions reads as follows:-

> ***"The area covered by this Scheme is wholly reserved for residential purposes and no part of it shall be used for purposes other than residential. No building shall be constructed or used for industrial purposes."***

(14) The lay out plan of 'Kartar Singh Sarabha Nagar' was undisputably prepared on 15.11.1971 (P-9).

(15) The record reveals that well before the finalization of lay out plan, the erstwhile Punjab State Electricity Board expressed interest to acquire land for its office/staff colony and in a meeting held on 11.12.1964, matter *re:* acquisition of about 30 to 40 acres of land in front of Punjab Agriculture University was discussed.

(16) The Chief Engineer PSEB requested the Chairman of Improvement Trust, Ludhiana on 13.10.1965 as to whether the Trust "could acquire the land through their good offices and then make over the same to the Board under which circumstances the Board can make the necessary payment to the Improvement Trust…". The Chairman, Improvement Trust, Ludhiana vide letter dated 25.01.1966 informed the Executive Engineer, PSEB Ludhiana that the Board of Trustees in their meeting held on 22.01.1966 had as a very special case agreed to give 25 acres of land to Electricity Board on the following terms and conditions:-

> *"a) The Electricity Board will pay exemption fee of Rs.1/- per sq.yd. over & above the compensation paid by the Trust in accordance with the award of the Land Acquisition Collector. This exemption fee hardly covers the incidental charges which the Trust has been incurring since the formulation of the Scheme during the last about four years.*
>
> *b) The Electricity Board shall give an undertaking to the effect that it will pay the additional amount of compensation together with interest, if any, enhanced by the Tribunal as a result of references to be filed by the landlords against the award of the Collector."*

(17) PSEB accepted those terms and conditions. Finally the Improvement Trust vide letter dated 18.08.1966 offered 31.13 acres land to PSEB on payment of ₹2,74,175/- as the cost of acquisition and ₹1,50,669/- as exemption fee @ ₹1 per sq.yard. On receipt of

payment, the demarcation was carried out and physical possession of the land measuring (i) 101815 sq.yds for staff colony, (ii) 21663 sq.yds for extension of Grid Station was delivered to PSEB on 29.04.1968.

(18) It was thereafter that the Trust notified the lay out plan of 'Kartar Singh Sarabha Nagar Phase-I and II' on 15.1.1971 according to which 281.00 acres of land was shown to have been utilized for different purposes as per the following:-

LAND USE	***Area in acres***	***%age***
Area under residential plots	*129.68*	*46.20*
Area under School	*19.51*	*6.90*
Area under Shopping Centre	*7.06*	*2.51*
Area under roads	*68.23*	*24.28*
Area under open spaces	*16.42*	*5.90*
Area reserved for PSEB staff colony	*22.00*	*7.82*
Area reserved for future ext. of PSEB & grid station	*12.79*	*4.50*
Area reserved for public business	*5.31*	*1.89*
Total area	***281.00***	***100.00%***

(19) It may be seen with bare eyes that the lay out plan simply depicted the land in question as reserved for PSEB staff colony whereas rest of the area was specifically earmarked for different purposes like residential plots, shopping centre or other public conveniences.

(20) At this stage, a brief reference to the statutory scheme of 1922 Act is also relevant. The Act contemplates formulation of various types of schemes by a Trust including (i) Development and Expansion schemes; (ii) Housing Accommodation scheme; (iii) Re-

Housing scheme etc. etc. The Trust may frame a Development Scheme for the development of any locality within the municipal limits under Section 24 of the Act. The subject-matters which can be included under different Schemes are jointly enlisted in Section 28 of the Act, the relevant extracts whereof are as follows:-

> *"**28. Combination of schemes and matters which may be provided for in scheme**.— (1) A scheme under this Act may combine one or more types of schemes or any special features thereof.*
>
> *(2) A scheme under this Act may provide for all or any of the following matters:-*
>
> *(i) the acquisition under the Land Acquisition Act, 1894, as modified by this Act, or the abandonment of such acquisition under sections 56 and 57 of this Act, of any land or any interest in land necessary for or affected by the execution of the scheme, or adjoining any street, thoroughfare, open space to be improved or formed under the scheme;*
>
> *(ii) xxxx xxxx xxxx*
> *(iii) xxxx xxxx xxxx*
> *(iv) xxxx xxxx xxxx*
> *(v) xxxx xxxx xxxx*
>
> *(vi) the laying out and alteration of streets;*
>
> *(vii) the provision of open spaces in the interests of the residents of any locality comprised in the scheme or any adjoining locality and the enlargement or alteration of existing open spaces;*
>
> *(viii) the raising, lowering or reclamation of any land vested in or to be acquired by the Trust for the purposes of the scheme and the reclamation or*

reservation of land for the production of fruit, vegetables, fuel, fodder and the like for the residents of the local area;

(ix) the draining, water-supply and lighting of streets altered or constructed;

(x) the provision of a system of drains and sewers for the improvement of ill-drained and insanitary localities;

(xi) the doing of all acts intended to promote the health of residents of the area comprised in the scheme, including the conservation and preservation from injury or pollution of rivers and other sources and means of water-supply;

(xii) xxxx xxxx xxxx
(xiii) xxxx xxxx xxxx
(xiv) xxxx xxxx xxxx

(xv) all other matters which the State Government may deem necessary to promote the general efficiency of a scheme or to improve the locality comprised in such scheme."

(21) Further, Section 35 of the 1922 Act provides that while framing a scheme in respect of any locality, regard shall be had to (a) the nature and the condition of adjoining localities and of the town as a whole; (b) the direction in which the town is likely to expand; and (c) the claim of any other part of the local area likely to require a scheme under the 1922 Act.

(22) The Trust is empowered to acquire land for the development of its Schemes for which objections are required to be invited through notice to be published under Section 38 of the Act.

The Trust is obligated to consider those objections before taking a decision under Section 40 to either abandon the scheme or to approach the State Government for sanctioning the scheme, with such modification as the Trust may deem necessary.

(23) Section 41 of the Act empowers the State Government to sanction and notify the Scheme whereupon the Trust proceeds to execute such Scheme. Section 43 of the Act is an enabling provision whereunder the Scheme under the Act can be altered by the Trust at any time with the prior approval of the Government between its sanction by the State Government and its execution. Section 42(1) and 43 are to the following effect:-

> *"**42. Notification of sanction of scheme**.– (1) The Provincial Government shall notify sanction of every scheme under this Act, and the Trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of section 27 have been fulfilled.*
>
> ***43. Alteration of scheme after sanction**.— A scheme under this Act may be altered by the Trust at any time with the prior approval of the government between its sanction by State Government and its execution."*

(24) It stands crystallized from the conjoint reading of Section 28 and 35 of the 1922 Act that the special features of a notified Scheme include (i) the land acquired for the Scheme; (ii) the mode of such acquisition; (iii) the details of the buildings to be demolished;

(iv) laying out and alteration of streets; (v) the provision of open spaces including of adjoining locality; (vi) the draining, water supply and lighting of streets; (vii) all acts intended to promote the health of residents including conservation and preservation from injury or pollution of rivers and other sources and means of water supply; (viii) facilities for communication and all other matters which the State Government may deem necessary to promote the general efficiency. While doing so, the nature and conditions of the adjoining localities and the manner in which the town is expanding as well as the expectations of adjoining local areas are also required to be kept in view.

(25) If the lay out plan dated 15.01.1971 of 'Kartar Singh Sarabha Nagar Scheme' (P9) is mirrored against the legislative objects of 1922 Act read with the mandatory procedure required to be observed while formulating a Scheme thereunder, we have no reason to doubt that the two parcels of land reserved for 'PSEB Staff Colony' or for 'future extension for PSEB' were consciously excluded from the Lay Out Plan of the subject Scheme and were never proposed to be utilized or reserved for any of the purposes of a Scheme as defined in Section 28 of the 1922 Act. The Trust while formulating the Scheme neither intended nor earmarked the PSEB land for any purpose of the Scheme. To say it differently, the statutory conditions required to be observed for the formulation of a valid Scheme were given effect in the lay out plan (P9) *qua* the land

other than the one already sold to PSEB. The land transferred to PSEB was in fact no longer available with the Trust at the time of conceptualization of the lay out plan.

(26) There was no promise ever made by the Trust or the State that the land given to PSEB would be kept as a green area or that it was meant to facilitate the prospective buyers of residential/commercial properties in 'Kartar Singh Sarabha Nagar'. The under-utilisation of its land by PSEB and incidental retention of the vacant area as a green and open space does not clothe the residents of 'Kartar Singh Sarabha Nagar Scheme' or adjoining areas to insist that such land must, for all times to come, be put to *status quo* condition for their advantage. The very edifice of the cause pleaded by the petitioners thus has no legal or factual foundation.

(27) Having held that, we may now briefly notice the object and legislative Policy of the Punjab Regional and Town Planning and Development Act, 1995 (in short, 'the 1995 Act') as well. **The Act has been enacted "to make provision for better planning and regulating the development and use of land in Planning areas delineated for that purpose, for preparation of Regional Plans and Master Plans and implementation thereof……. and for undertaking urban development and housing programmes and schemes for establishing new towns; and for matters connected therewith or incident thereto.**

(28) Section 2 of the 1995 Act contains 'definitions' and its Clause (t) defines "local authority" which includes a Town Improvement Trust also. Chapter-III of the Act (Sections 17 to 34) deals with establishment of Punjab Urban Planning and Development Authority as well as New Towns Planning and Development Authorities. The Greater Ludhiana Development Authority (GLADA) is also a creation under these provisions. Section 35 of the Act contemplates that an Authority under the Act (like GLADA), after it has developed an area, shall entrust the same to the 'local Authority' discharging municipal functions within that area. Section 36 of the 1995 Act provides that where an Improvement Trust stands abolished/dissolved, all its assets and liabilities shall stand transferred to and vested in the Authority.

(29) Section 61 of the Act empowers the State Government to prepare a 'Regional Plan' and as per Section 62, such 'Regional Plan' shall contain as follows:-

> *"(a) demarcation of areas for agriculture, forestry, industry, mineral development, urban and rural settlements and other activities ;*
> *(b) reservation of areas for open spaces, recreation, reserves, animal sanctuaries, dairies and health resorts;*
> *(c) transport and communication network such as roads, highways, railways, waterways, canals and airports including their development;*

> *(d) water supply, drainage, sewerage, sewage disposal and other public utilities, amenities and services including electricity and gas;*
>
> *(e) reservation of sites for new towns, industrial estates and any other large scale developments or projects which are required to be undertaken for proper development of the regional planning area;*
>
> *(f) preservation, conservation and development of areas of natural scenery, forest, wild life, [natural resources, land-scaping, heritage site and control of development, which is either affecting the heritage site or its vicinity;]*
>
> *(g) **[preservation of objects, features, structure or places of historical, natural, architectural or scientific interest, educational value and heritage site;]*
>
> *(h) areas required for military and defence purposes;*
>
> *(i) prevention of erosion, provision for afforestation or reforestation, improvement and redevelopment of water front area, rivers and lakes;*
>
> *(j) irrigation, water supply and hydro-electric works, flood control and prevention of river pollution; and*
>
> *(k) re-allocation of population or industry from over populated and industrially congested area, indicating the density of population or the concentration of industry to be allowed in any area."*

(30) Similarly, Section 91 of the 1995 Act empowers an Authority to prepare the 'Town Development Scheme' which includes all the matters specified in Section 62. In addition, the Town Development Scheme would include (i) laying out/re-laying out land,

vacant or already built upon; (ii) lay out of new streets or roads; (iii) re-constitution of plots; (iv) construction, alteration and removal of buildings, bridges and other structures; (v) reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets etc. (vi) housing scheme for different income groups, commercial areas; (vii) drainage, lighting and water supply etc.

(31) Section 93 of the Act mandates that the Authority "with the prior consent of the local authority in whose jurisdiction the land under the proposed scheme falls", shall make a draft scheme for the area and publish a notice in the official Gazette. Sub-Section (3) enables an affected person to submit his objections in writing and such objections are required to be considered by the Authority 'before submitting the draft scheme to the State Government' for approval.

(32) On a comparative analysis of the objects and the legislative schemes behind the 1922 Act and 1995 Act, we see no reason to doubt that both the Statutes are complementary and supplementary to each other. There is neither a conflict nor any overlapping between the provisions of two Acts. The 1922 Act operates in a 'smaller area' within the municipal limits in respect whereof the Development Scheme can be formulated by a Trust. The scheme of 1922 Act does provide an opportunity to the affected persons to submit their objections at the stage of proposing the acquisition of their land or while formulating the Scheme. As against it, the 1995 Act has wider contours and it operates beyond

the municipal areas save that such area has been notified as a part of the 'planned area'. The 1995 Act conceptualizes the overall development of a region beyond the outer or municipal limits of an existing town. This Act too mandates that the affected persons shall be heard and their objections are to be considered before giving effect to a draft scheme. There is thus no incongruity, contradiction or conflict between the two Legislations as they march towards achieving the same goal of regulated development.

(33) There is a sea-change in Ludhiana city of 1971 and 2012-15. Its population, municipal area as well as modern urbanization beyond the peripheral limits has multiplied manifolds. It is now a Metropolitan city and the busiest commercial hub of Punjab State. The needs and expectations of its residents cannot be assessed on the yardsticks of 1971. Since GLADA has been established for the holistic regional development of Ludhiana city and its surrounding areas, the need-based development projects will have to be undertaken by that Authority keeping in view the larger public interest and not the narrow considerations like the incidental or fortuitous advantages to the residents of a locality. Still further, the project to be mooted by GLADA being an integral part of the Town Development Scheme, it is obvious that such a project cannot be given effect unless objections from the affected persons are invited and duly considered by the Authority before seeking approval of its Draft Scheme from the State Government.

(34) We have no reason to doubt that the Authorities including GLADA are conscious of their responsibility under the 1995 Act and shall abide by the mandatory procedure required to be observed before giving effect to a development project.

(35) In the light of these observations and the findings, we do not find any merit in these writ petitions which are accordingly dismissed.

(Surya Kant)
Judge

27.11.2015
vishal shonkar

(Jaspal Singh)
Judge