

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 20906 of 2015 (O&M)
Date of decision: 01.10.2015**

Shri Bala Ji Complex Welfare Society (Regd.)

....Petitioner

Versus

State of Punjab and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

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

Present: Mr. Arun Gosain, Advocate
for the petitioner.

P.B. Bajanthri, J.

In this petition, the petitioner Shri Bala Ji Complex Welfare Society, has sought for quashing layout plan drawn vide DRG No. AIT/ATP/4170/11 dated 08.08.2011 (Annexure P-9) amended vide Trust Resolution dated 01.06.2011 approved by the State Government vide memo No. 8/129/10(2-1 L.G.2/1562) and proposed parking phase vide construction plan drawn vide no. A-02 dated 22.06.2013 (Annexure P-12). A further direction to the respondents to restore layout plan drawn vide DRG No. AIT/ATP-4097/06 dated 19.04.2006 (Annexure P-8) has also been sought.

2. The petitioner is a registered society under the Societies Registration Act, 1860 and is engaged in one or the other business in Durgiana

Complex, Durgiana Abadi, Amritsar.

3. The third respondent issued a notification relating to development scheme under Section 36 of the Punjab Town Improvement Act, 1922 (for short “Act”) for the adjoining area of Shri Durgiana Mandir. The development scheme is for about 3.2 acres and it was notified on 19.01.2001. The aforesaid scheme was sanctioned by the Government vide notification No.6/1/2002-4SS2/531-534 on 14.01.2002 under Section 41 of the Act. Widening of the road leading to Shri Durgiana Temple is one of the item included in the said development scheme. Expansion of the road is from 20 feet to 66 feet. In this regard, resolution No.28 was passed by the Trust unanimously and the same was approved on 07.03.2005.

4. Pursuant to the development scheme notice under Section 36 of the Act was notified on 13.05.2005. Thereafter, on 22/23.05.2006 State Government issued a notification gazette under sub-Section (1) of Section 41 of the Act. The Governor of Punjab was pleased to sanction the development scheme of 3.03 acres known as “Dugriana Mandir complex”. The scheme so framed under Section 24 read with Section 28(2) of the Act was for an area of approximately for about 3.03 acres situated within the limits of Municipal Corporation, Amritsar and within the local area of Amritsar Improvement Trust, Amritsar. The said notification was issued pursuant to sub-section (1) of Section 42 of the Act and the schedules. Thereafter, survey plan of the area adjoining Durgiana Temple, Amritsar was prepared by the Town Planning Department. The same was approved by the Government. Consequently, layout plan of development scheme for the adjoining Shri Durgiana Temple, Amritsar was prepared by the Town Planning Department in the month of April, 2006.

5. With certain amendment/modification of layout plan of development scheme of beautification of Durgiana Mandir, Amritsar was replaced by revised layout plan in the year 2011 and the said layout plan was also approved by the competent authority.

6. When things stood thus, in and around shop owners of the Durgiana Mandir, Amritsar had a grievance that their livelihood was affected due to implementation of the development scheme in and around Durgiana Mandir Complex, therefore they approached this Court with a grievance that allotment of shops and other infrastructure to them should be provided to accommodate each one of them etc. The said writ petition was disposed of on 21.12.2011 titled as ***Nalanda Elementary School and others versus State of Punjab and others*** and connected matters (CWP No.9557 of 2010). This Court while disposing of the aforeaid petition observed as follows:-

“6. The counsel for the petitioners contend that they shall not be evicted till the new constructions are made and delivered to them. The counsel for the Mandir point out, and in my view correctly, that the new shops are not constructed else where but in an organized fashion in the very same place after securing their eviction and demolishing the existing structures. The only protection that could be given in that the Improvement Trust shall finalize the construction plan, draw up a time schedule for beginning and completing the construction, secure allocation of funds for the projects and publish the same as the location in the notice board at the Mandir Complex before securing eviction. The publication is to ensure transparency of the decision making and to bring a sense of fair play to all the affected parties.”

7. The competent authority issued a layout plan relating to proposed parking in and around Durgiana Mandir Complex, Amritsar vide Annexure P12.

8. The petitioner stated to have submitted representation to the 2nd

respondent-Deputy Commissioner, Amritsar stating that change/modification/ amendment in layout plan passed on 08.08.2011 vide Annexure P9 resulted in elevation of certain portion of the road leading to the Durgiana Temple, Amritsar. If the modified layout is implemented their business would be affected and 59 families would lead to starvation etc. Thus, they have requested the road should be constructed without their being elevation (ramp walk path) from the ground level in between shopping complex and temple vide Annexure P-13. Since 2nd respondent has not taken any action pursuant to the petitioner's representation, the petitioner's society have questioned the modified layout plan and to restore the earlier plan, hence this petition.

9. Learned counsel for the petitioner while challenging modified layout plan of development scheme for the area adjoining Shri Durgiana Temple, Amritsar contended that the State Government cannot pick and choose some land owners and release the lands from acquisition while issuing notice under Section 36 of the Act and deny the same benefit to other land owners etc. The acquisition proceedings manifestly in violation of fundamental right of fairness and equal treatment as guaranteed under Article 14 of the Constitution. It was further contended that resolution dated 01.06.2011 passed by the trust is contrary to the interest of the public and further contended that members of the petitioner society would be ruined for want of their only source of livelihood as provided under Section 72-B of the Act. The Government extended the benefit of passage to the main entrance to the Mandir abutting right next to the level of such illegal occupants is manifestation of gross injustice to the class or body of expropriated persons who have been allotted alternative shops for running their business etc. Learned counsel for the petitioner further contended that the proposed change of layout plan while resolution dated 01.06.2011 is passed

and the amended lay out plan dated 08.08.2011 vide Annexure P9 is prepared and approved by the State Government with an aim to extend the benefit of such development to few encroachers over the public land which have been left out from the acquisition at the will of the Government. Although the acquisition of the said land would save the public fund which have otherwise been unnecessarily diverted to develop land occupied by the encroachers. Therefore, the amendment in the layout plan is a gross abuse of power and traits of malafide which synonymous to the colorable exercise of power. Under the guise of power conferred upon for a purpose, the respondents are seeking to achieve something else which is otherwise not within the powers of the respondents. Thus the impugned modified layout plan is invalid and illegal.

10. We have heard learned counsel for the petitioner.

11. The petitioners are shopkeepers and they have formed society called Shri Bala Ji Complex Welfare Society, Durgiana Complex, Durgiana Abadi, Amritsar. Their main grievance is that due to elevation of approach road to Durgiana Temple, Amritsar their business would be affected seriously since visitors/customers who are on the way to Durgiana mandir they would take the route of elevated road, whereby their business would be affected. Therefore, the impugned layout plan of development scheme of beautification of Durgiana Mandir Complex, Amritsar, and proposed parking area are arbitrary and illegal. The petitioners in the guise of challenging the modified layout plan of development scheme of beautification of Shri Durgiana Mandir, Amritsar and proposed parking area, have contended that acquisition of land proposed itself is not in accordance with law and there is a discrimination in acquisition of land etc. The said contention is not tenable for the reasons that the petitioner has not questioned the validity of the acquisition of land. What

has been questioned is implementation of the development scheme for the area adjoining Shri Durgiana Temple, Amritsar mode/method is incorrect. Therefore, the validity of acquisition proceedings is not a ground to be entertained in the present petition. Moreover, it is a very vague contention. Insofar as challenge to the modified layout plan and proposed parking area is concerned it was contended by the petitioner that in order to benefit certain section of people the modified plan namely approach road to Durgiana Temple has been elevated. Petitioners have not named and impleaded those persons who are benefited by elevation of approach road to the Durgiana Temple. The petitioners have not urged any malafide against any respondent and not impleaded by name. Consequently, malafide and colorable exercise of power contention in issuing modified plan is not tenable.

12. Chapter IV-Schemes under the Act (The Punjab Town Improvement Act, 1922) has been strictly adhered by the respondents.

13. The petitioners have no locus standi nor any legal status to question the amendment/modified layout plan of development scheme for the area adjoining Shri Durgiana Temple, Amritsar. It is a development scheme formulated in public interest and it is a public policy therefore, the petitioner has not made out a case so as to how its right is affected by implementation of the amended/modified layout plan and proposed parking area. The petitioners therefore, have no locus standi to question modified layout plan and proposed parking area of the subject development scheme.

14. Even, assuming that the petitioner has got locus standi, yet the development scheme of beautification of Shri Durgiana Mandir, Amritsar was modified on 08.08.2011 (Annexure P-9) and the writ petition has been filed in the year 2015. The petition is to be rejected on the ground of delay and latches.

The petitioners have questioned the layout plan of a public scheme which was finalized in the year 2011 itself. In the present case, the petitioner and others were already before this Court for the grievance stated in para No.6 in CWP No. 9557 of 2010 and it was disposed of on 21.12.2011. As on that date modified layout plan was already notified. Therefore, the petitioner had knowledge of the modified layout plan in 2011 itself. However, for no reason matter was not agitated between 2011 to 2015. Therefore, on the ground of delay and laches, the petition is to be dismissed.

15. Having regard to the status of the petitioner and prayer made in this petition neither it is personal grievance nor it is in public interest. Since the petitioners on one side contend that elevation of approach road to Durgiana Mandir, Amritsar would be affecting their livelihood (business), on the other hand, they allege that there is a violation of law, by which public fund is spent unnecessarily etc. therefore, the writ petition itself is not maintainable since the petitioner-Society right has not been affected in any manner insofar as modified/amended layout plan issued on 08.08.2011 (Annexure P-9) read with proposed parking area for the purpose of implementation of development scheme for the area adjoining Shri Durgiana Mandir, Amritsar nor any general public is affected.

16. Layout plan of development scheme of beautification of Shri Durgiana Mandir, Amritsar is a public policy with engineering precision therefore, the petitioner cannot question the layout plan and seek direction to implement a particular layout plan in a particular manner. This court would be extremely reluctant in commanding the respondents to carry out layout plan and development scheme of beautification of Shri Durgiana Mandir, Amritsar and proposed parking area in a particular manner as desired by the petitioner

since it is a public policy and it is for the State and concerned authority to take a decision. That apart it is technical and engineering subject and experts in the aforesaid field are in a position to judge whether elevated road is feasible or not and it is not for the petitioner or to this court to opine on it.

17. Interference with the policy decision and issue of a mandamus to frame policy in a particular manner are absolutely different. The Act has conferred power on the concerned authority/State Government to issue notification regarding the manner in which the development scheme has to be carried out and the State Government/concerned authority has issued notification in accordance with Act. It is not within the domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional, where it is called for. The courts required to understand the policy decisions framed by the executive. If a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the Development Scheme-notification was not under assail and the same is in consonance with the Act, it is really unfathomable how this court could issue directions as to the manner in which development scheme would be carried out by replacing/modifying tinkering certain aspects.

18. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and the people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. In the present case, the petitioners have not made out a case so as to violating their fundamental rights insofar as elevation of the approach road to Durgiana Mandir while implementing the development scheme by the respondents.

19. The Apex Court in the following cases held as follows:-

“A. In Premium Granites V. State of Tamil Nadu, 1994(2) SCC691 while dealing with the power of the courts in interfering with the policy decision, the Court has ruled that:

“54. It is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy could be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right.”

B. In M.P. Oil Extraction and Anr. V. State of M.P. (1997)7SCC 592 a two-Judge Bench opined that:

“41..... The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State.”

C. In State of M.P. V. Narmada Bachao Andolan,(2011)7 SCC 639 after referring to the State of Punjab V. Ram Lubhaya Bagga, the Court ruled thus:

“36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the

policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See Ram Singh Vijay Pal Singh v. State of U.P.²⁰ , Villianur Iyarkkai Padukappu Maiyam v. Union of India²¹ and State of Kerala v. Peoples Union for Civil Liberties.)”

20. The ratio laid in the aforesaid decisions aptly apply to the case in hand. We have pondered over the issue in depth with reference to writ papers and find no force in the submissions of learned counsel for the petitioner. It is clear from the facts of the case and challenge to the modified layout plan and proposed parking area for the layout plan of development scheme of beautification of Shri Durgiana Mandir, Amritsar that the petitioner has not been affected in any manner. Moreover, elevation of road in a development scheme is in the public interest and such a decision has been taken by the competent authority i.e. technical persons and who are experts in that particular field. Therefore, we decline to interfere with the amended layout plan of development scheme of beautification of Shri Durgiana Mandir, Amritsar and proposed parking area (vide Annexure P-9 and P12 respectively).

21. Accordingly, writ petition is dismissed.

22. No order as to costs.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

01.10.2015
pooja saini