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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: August 31, 2016
CWP No.2238 of 1989 (O&M)

Tarsem Kumar and others
.....Petitioners
Versus

Bathinda Improvement Trust, Bathinda and another
.....Respondents

CWP No.16673 of 1989

Gurtej Singh and others
.....Petitioners
Versus

Bathinda Improvement Trust, Bathinda and another
.....Respondents

CWP No.2053 of 1990

Daya Singh and others
.....Petitioners
Versus

Bathinda Improvement Trust, Bathinda and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate and
Mr. Rajiv Mittal, Advocate
for the petitioners (in CWP No.2238 of 1989,
CWP No.16673 of 1989).

Mr. Rupinder S. Khosla, Senior Advocate with
Mr. Sarvesh Malik, Advocate and
Mr. Rajiv Mittal, Advocate
for petitioners No.1 to 3 (in CWP No.2053 of 1990).

Mr. Salil Sagar, Senior Advocate with
Mr. Samrath Sagar, Advocate
for the respondent-Trust.

Mr. Rajesh Bhardwaj, Addl. AG Punjab.

A.B. CHAUDHARI, J

FACTS

The petitioners have filed these three writ petitions, i.e. CWP No.2238 of 1989, CWP No.16673 of 1989 and CWP No.2053 of 1990 on 21.02.1989, 29.11.1989 and 09.01.1990 respectively, i.e. after CWPs raising challenge to the land acquisition in scheme 25.21 acres were decided by the learned Single Judge by allowing those writ petitions. It is the case of the petitioners that the acquisition, that was proposed, was malafide and with a view of peg down the prices of the land of the petitioners and others and, though, the earlier attempt to make acquisition had failed vide judgment and order dated 03.12.1982 passed by Hon'ble Mr. Justice I.S. Tiwana, in various writ petitions.

The petitioners have then contended that stay order was issued by the Deputy Commissioner to the resolution dated 06.01.1984 passed by the Trust to revive the scheme and in defiance thereof, notification under Section 36 of the Punjab Town Improvement Act, 1922 (for short 'Act') was published, firstly in "Daily Ajit (Punjabi)" on 05.02.1984 and thereafter, in (Daily Tribune) on 10.02.1984 and Punjab Government gazette on 09.03.1984. The publications were made after 30 days from the publication of first notice. The petitioners were not given opportunity to raise objections to the notification under Section 36 of the Act. The sanction order/notification dated 05.03.1987 was made beyond the period of three years from the notification under Section 36 of the Act. It was not clear as to which 14 schemes out of 19 schemes were proposed to be re-

notified. The mandatory provisions of Sections, 36, 38 and 42 of the Act were not complied with. In the petition, i.e. CWP No.2238 of 1989, following 5 questions have been raised:-

- “i) Whether the sanction has been granted after the expiry of statutory period of three years?*
- ii) Whether the action of the respondents in publishing notices Annexures P-5 and P-6, under Section 36 of the Act, is mala fide with the intention to peg down the prices of the land of the petitioners?*
- iii) Whether the Resolution Annexure P-3 is vague and does not authorise the notification of the scheme in accordance with the provisions of the Act?*
- iv) Whether the scheme being originally still borne, could be revived?*
- v) Whether the impugned scheme is void for not complying with the mandatory provisions of Sections 36, 38 and 40 of the Act.”*

It is in the above background, prayers have been made in the writ petitions for quashing of the acquisition proceedings in entirety.

ARGUMENTS

In support of these three writ petitions, learned counsel for the petitioners made submissions which we have dealt with in the main judgment. The questions raised in these writ petitions have also been considered by us in the main judgment. It is, therefore, not necessary for us to reproduce the submissions.

These three writ petitions are also required to be decided in view of the order of remand made by the Hon'ble Supreme Court on 08.02.2013 in various civil appeals. As per the order made by the Hon'ble Supreme Court as to the service of individual notice under Section 38 of

the Act, we find the following from the record shown to us:-

- (i) **CWP No.2238 of 1989**: Out of 12 petitioners in this case, notices said to have been dispatched on 05.12.1984 vide dispatch No.1926. No objection is on record. Notices under Section 38 of the Act are said to have been served on Dalip Singh, Bhappa Singh, brother of Om Parkash. However, there is endorsement by Pritam Singh about notice given to Dalip Singh but then there is no acknowledgment by any of the petitioner about receipt of the notice. It cannot be, therefore, held that the notices were served on any of the petitioners.
- (ii) **CWP No.16673 of 1989**: In all, there are 6 petitioners and notices have been said to have been dispatched on 05.12.1984 vide dispatch No.1947. The notices have said to have been dispatched at the site. It is thus, clear that no individual notice was served on the petitioners, nor there is any objection on record.
- (iii) **CWP No.2053 of 1990**: There are 9 petitioners in this petition and notices said to have been dispatched on 06.12.1984 vide dispatch No.1976 and 1977, but there is no proof of service on individual notice on the petitioners. However, on record, there are objections filed by Balwant Singh s/o Daya Singh (petitioner No.2), Charanjit Kaur w/o Balwant Singh (petitioner No.3), Kartar Kaur through Kamaljit Singh (LR No.2(iii) of petitioner No.2), Kartar Kaur through Daljit Singh (LR No.2(ii) of petitioner No.2). The petitioners appear to be the member of one family. The record shows that on the revenue record, the name of Kartar Kaur w/o Daya Singh only is mentioned by mutation entry. Thus, the objections were filed by Kartar Kaur and her family members.

At the outset, we find that all these three writ petitions were

filed after the judgment rendered by the learned Single Judge. These writ petitions were, however, entertained by the Division Bench of this Court, obviously, after the decision was rendered by the learned Single Judge. In our considered opinion, the challenge to the land acquisition proceedings, in these three writ petitions, must be held to be hopelessly time barred. At any rate, since the objections were filed by the petitioners and their family members and atleast Kartar Kaur who was only on the revenue record, the contention about non-service under Section 38 of the Act will have to be rejected. A perusal of these writ petitions, nowhere, show any explanation for delay and laches on the part of the petitioners in filing these writ petitions.

According to us, these three writ petitions, ought to be dismissed in the light of the decision of the Apex Court in the case of **Reliance Petroleum Ltd. vs. Zaver Chand Popatlal Sumaria and others**, (1996) SCC 579 in Paras 12 and 14, **State of Tamil Nadu and others vs. L. Krishnan and others**, 1996(1) SCC 250, and **Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. Pvt. Ltd. and others**, (1996) SCC 501, in Paras 22, 23, 24, 25, 26, 27 28 and 29. We have recorded the relevant paragraphs quoted above in our main judgment and therefore, we are not reproducing the same again.

We are, therefore, of the affirm view that these three writ petitions in the light of the law laid down by the Apex Court, cannot be entertained for the delay and laches.

As to the non-service of the individual(s) under Section 38 of the Act, we have given detailed reasons in the main judgment that mere

non-service of individual(s) notice would not vitiate the land acquisition proceedings. We have said in the main judgment that we are fortified with the view taken by the Apex Court in few judgments, which we have quoted in the main judgment. For all the above, reasons, therefore, we find no merits in these three writ petitions and hence, we make the following order:-

ORDER

CWP Nos.2238 of 1989, CWP No.16673 of 1989 and CWP No.2053 of 1990 stand dismissed.

(SURYA KANT)
JUDGE

(A.B. CHAUDHARI)
JUDGE

August 31, 2016
mahavir

Whether speaking/ reasoned: Yes

Whether Reportable: Yes