

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-4664- CWP-2013 in/and
RA-CW-112-2013 in
CWP No. 16104 of 2008

Malkiat Singh
Versus
State of Punjab & Ors.

CM-4663- CWP-2013 in/and
RA-CW-111 of 2013 in
CWP No. 16111 of 2008,

Balbir Singh & Anr.
Versus
State of Punjab & Ors.

CM-4666-CWP-2013
CM-13183-CWP-2014 in/and
RA-CW-113 of 2013 in
CWP No. 16110 of 2008

Amarinder Singh
Versus
State of Punjab & Ors.

Date of Decision : 19.12.2016

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA

1. Whether Speaking?	Yes
2. Whether Reportable?	Yes
3. Whether Reporters of local papers may be allowed to see the judgment?	Yes
4. To be referred to the Reporters or not?	No
5. Whether the judgment should be reported in the Digest?	No

Present: Mr. Tushar Sharma, Advocate;
Mr. Deepak Aggarwal, Advocate;
Mr. GL Bajaj, Advocate for the review-applicant(s)

Mr. Anil Chaudhary, Addl. AG Punjab

Ms. Akshita, Advocate for PUDA

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate for BDA

SURYA KANT, J.

(1) This order shall dispose of the above-captioned review applications seeking to recall the orders dated 03.05.2011 and 05.08.2011. The first order dated 03.05.2011 whereby the writ petition was dismissed as withdrawn recites that “*After arguing for some time, when confronted with a ratio of a judgement passed in CWP No.29 of 2004 titled as Jasmer Singh vs. State of Punjab & Anr. decided on 26.09.2007 attached as Annexure P2 with*

this petition, counsel for the petitioner wishes to withdraw this writ petition. Ordered accordingly.”.

(2) The review applicant/petitioners thereafter moved Civil Misc. Applications for the recall of the above-reproduced order and to decide the writ petitions on merits. The plea taken was that the dispute raised by them was not covered by *ratio* of the judgment of this Court in Jasmer Singh’s case. The Division Bench was, however, not impressed by the submission. It briefly noticed the facts and the legal issues decided in Jasmer Singh’s case and thereafter dismissed the misc. applications on 05.08.2011 with the following observations:-

“When we asked counsel for the applicants as to what is the different ground on the basis of which this writ petition has been filed as the question of law had already been settled by this Court in Jasmer Singh’s case (supra), it was argued that the previous acquisition was at Mohali and the present acquisition is at Bathinda. This writ petition was filed by the same counsel, who was also a counsel in Jasmer Singh’s case (supra). We are not going to subscribe to an idea that once question of law is settled, merely fresh acquisition has been ordered to challenge exemption granted under Section 178(2) of the 1995 Act, a fresh writ petition can be filed. The present writ petition was totally misconceived one. In view of above, the counsel, who appeared before this Court on May 3, 2011, rightly

withdrew this writ petition when confronted with the ratio of the judgment in Jasmer Singh's case (supra). ”

(3) The aggrieved petitioners challenged the above-stated order in Special Leave Petition and the Hon'ble Supreme Court vide interim order dated 04.05.2012, permitted the respondent-Bathinda Development Authority (BDA) to complete all other formalities and development activities of the area in dispute but restrained from creating third party rights without permission of the Court.

(4) The Special Leave Petitions were finally disposed of on 28.02.2013 in the following terms and with liberty to the petitioners (relevant extracts only):-

“Mr. V.Giri, learned senior counsel appearing for the petitioners submits that matter is not concluded by the judgement in Jasmer Singh's case.

Mr. H.P. Raval, learned Additional Solicitor General appearing for the respondents, however, joins issue and contends that it is concluded by the judgement in said case.

Be that as it may, order dated 05.08.2011 passed by the High Court does not indicate that any such submission was made.

In view of the aforesaid, we give liberty to the petitioners to file appropriate application for review of the order dated 05.08.2011 and urge such points as are available to them to show that the matter is not concluded by the judgement in Jasmer Singh's case.

Needless to state that in case such an application is filed by the petitioners, the High Court shall consider the same in accordance with law.

Petitioners undertake to file such an application within a period of two weeks from today.

This Court's order dated 04.05.2012 shall remain operative till the final disposal of the said application for review of order dated 05.08.2011."

(5) This is how these review applications have been filed by the writ-petitioners. Upon notice, BDA has filed its reply/affidavit dated 27.08.2013 and an additional affidavit dated 08.11.2014.

(6) Learned counsel for the parties have been heard at a considerable length. The record has been perused.

(7) Though learned senior counsel for BDA at the outset rightly reminded us the limited scope of a review application as reiterated by the Hon'ble Supreme Court in **Kamlesh Verma vs. Mayawati & Ors. (2013) 8 SCC 320**, nevertheless, we deem it appropriate to deal with the petitioner's contentions on merits, keeping in view the observations made by the Hon'ble Supreme Court in the order dated 28.02.2013.

(8) The principal issue which arises for determination is whether the controversy in hand has since been settled by this Court in **Jasmer Singh's** case?

(9) Firstly, a brief reference to the facts may be made. To avoid repetition, the facts are being extracted from RA-CW-112-2013 in CWP-16104-2008.

(10) The review applicant/writ petitioner (in short, the petitioner) approached this Court challenging the State Government order dated 19.09.2007 purportedly passed in exercise of its powers conferred under Section 178(2) of the Punjab Regional and Town Planning and Development Act, 1995 (in short, the 1995 Act') whereby the State Government exempted the area measuring 240.20 acres of village Bathinda, Tehsil & District Bathinda from the operation of uncomplined provisions of Section 14 and consequently of the uncomplined provisions contained in Chapters VIII, X, XII i.e. Sections 56 to 60, 70 to 78 and 91 to 138 of the 1995 Act. The petitioner also questioned the *vires* of Section 178(2) of 1995 Act, as according to him, it was hit by Article 14 of the Constitution for it gives unguided and uncontrolled powers to the executive to modify or delete any or all the provisions of Statute for any reason whatsoever.

(11) The above-stated challenge was laid in the backdrop that the petitioner along with others had by way of CWP No.8155 of 2006 challenged the acquisition of their land vide notifications dated 06.10.2004 and 07.03.2005 issued under Section 4&6 of the Land Acquisition Act, 1894, whereby land measuring 240.21 acres was decided to be acquired.

(12) Meanwhile, the award was announced on 06.03.2007 which was also challenged by the petitioner and his co-sharers in CWP No.8407 of 2007. It came to be disclosed in the written statement filed in the second case that the entire acquisition had been exempted from the provisions of the 1995 Act by way of order dated 19.09.1997, hence the petitioner filed the instant 3rd writ petition challenging the said exemption order.

(13) It will be useful at this stage to make a brief reference to the scheme of 1995 Act. The Act has been enacted to make provision for better planning and regulating the development and use of land in planning areas...for preparation of Regional Plans and Master Plans and implementation thereof... and for the constitution of a State, Regional and Town Development Board... also for the constitution of a State Urban Planning and Development Authority or Authorities for the effective and planned development of the planning areas. The Act thus provides for establishment of the Board and other statutory authorities to carry out developments at Regional or State level. These authorities have been vested with the powers of Local Authority. Various other statutory powers have also been vested in the Board and Authorities.

(14) The Act further contemplates that the State Government shall notify in the Official Gazette declaring the area to be Regional Planning Area, a Local Planning Area or the site for a New Township. For every such notified area, Regional Plans shall be notified. Similarly, the designated planning agency shall prepare a master plan for the planning area which shall be notified on approval by the State Government. Further development works shall be carried out in accordance with such Regional and Master Plans. The Act also contains provisions for levy of development charges and the manner of assessment and recovery of such charges.

(15) Section 178(2) of the Act further provides that where the State Government is of the opinion that operation of any of the provisions of this Act is likely to cause any undue hardship or there are circumstances which render it expedient so to do, it may subject to such terms and conditions as it

may impose, by general or special order, exempt such class of persons or areas from all or any provisions of this Act.

(16) The State Government in exercise of its powers under Section 178(2) of 1995 Act passed the order dated 19.09.2007 whereby it exempted the area measuring 240.20 acres of village Bathinda from some of the provisions of the Act, as briefly noticed in para-12 above, so as to enable the BDA to develop that area without going into the rigmarole of preparation and notification of the Regional Plan or Master Plan. The reasons which prompted the State Government to exempt the said area can be delineated from para 5&6 of the order which read as follows:-

“5. Whereas the procedure prescribed for the framing of the Regional Plan or a Master Plan is a lengthy and cumbersome process and takes years to finalise, thereby defeating the basic objects of rapid planned urban development and growth as envisaged by the Act.

6. Whereas because of enormous pressure of demographic shift of population from Rural to Urban areas in the State of Punjab, there is an immediate and considerable increase in the demand for urban housing. Due to the lengthy and cumbersome process for framing the Regional and Master Plans, the authority is not being able to fulfill its, avowed objects of catering of this rapid shift in the demographic profile. This has led to the mushrooming of haphazard, ramshackle and unplanned growth of slums in

and around cities and around highways, thereby defeating the basic objects of the Act.”

(17) Those very reasons were explained in detail by the State Government in its written statement dated 27.04.2009.

(18) As is discernible from the order dated 03.05.2011, when the writ petition came up for hearing, the Division Bench confronted learned counsel for the petitioner with the decision of a coordinate Bench dated 26.09.2007 passed in CWP No.29 of 2004 i.e. **Jasmer Singh's** case (supra) and the learned counsel having realized that the point in issue already stood answered against the petitioner by the cited judgment, withdrew the writ petition.

(19) It is thus necessary at this stage to make a brief reference to the Division Bench judgment in **Jasmer Singh's** case (supra). There, the land was acquired by State of Punjab for the development of Sectors 76 to 80 in SAS Nagar Mohali. The acquisition was challenged in a bunch of writ petitions, apparently on the ground that the mandatory procedure contemplated under the 1995 Act for development of a planned area was not followed. The Government of Punjab then passed an order dated 19.05.2003 in exercise of its powers under Section 178(2) of the 1995 Act and granted exemption to the acquired area from the provisions contained in Chapters VIII, X & XII of the Act. The aggrieved owners challenged the order of exemption. The Bench, after referring to the legislative scheme of the Act and after taking notice of the reasons assigned by the State Government for granting exemption, upheld the order of exemption for the following reasons:-

a) *“A perusal of the above reproduced order reveals that SAS Nagar (Mohali) was conceptualized to include Sectors 53*

to 81 out of which Sectors 53 to 75 were developed in the first phase and the planning for developing Sectors 76 to 80 is only a continuation of the existing Sectors with a view to expand the township of SAS Nagar (Mohali) in order to meet the future housing and other needs. It is also evident from the record that the present expansion was conceived as a development of Phase-III of the city of Chandigarh so as to meet the burgeoning demand of housing to satiate the need of the people for being accommodated in the wake of the saturation achieved by Chandigarh city... ”;

- b) *“The plan for expansion was prepared on 15.7.1994, which was approved on 15.6.1995 culminating into a decision on 25.8.1995, whereas the 1995 Act came into existence on 1.7.1995. Thus, the seeds of the development plan were concededly sown prior to the coming into force of the 1995 Act.... ”;*
- c) *“But, we need to add here that the 1995 Act itself contemplates and visualized certain contingencies where the provisions thereof can be made redundant to a situation if the State Government formulates an opinion on the basis of the reasons to be reflected in such a decision/opinion that it is desirable and expedient to exempt a class of persons or areas from the provisions of it... ”;*

- d) *“We hasten to add here and emphasize that the fact that the township of SAS Nagar (Mohali) was conceived much earlier, which, conceptualized in its development fold the present Sectors 76 to 80 which were, in turn, again conceived prior to the coming into force of the 1995 Act, has seemingly made the present exemption a necessity to meet the object of development...”*;
- e) *“Adverting to the impugned order, we notice that it takes into consideration various difficulties being faced by the respondents which propelled them to resort to the exercise of power under Section 178(2) of the 1995 Act...”*;
- f) *“The township of SAS Nagar (Mohali) recorded the highest rate of growth of population necessitating the urgency to take up a planned development and to prevent haphazard growth and the city of SAS Nagar (Mohali) is a satellite town of Chandigarh which had already achieved saturation of sorts with no room to take in anything more even after it had extended its wings to the limits...”*

(20) Thereafter the Bench dwelled upon the scope of power exercisable by the State Government and answered it as follows :-

“In view of this, the power of the State Government to grant exemption under Section 178(2) cannot be doubted and the said power can be exercised at any stage even if an action has been taken strictly following the provisions of the 1995

Act, provided it forms a valid opinion by giving cogent reasons that undue hardship or circumstances existed, for which it is expedient to resort to the said Section. This would not render the grant of exemption from a retrospective effect as it is only after traversing on the path of decision making en route to the achieving of the object sought to the met under the 1995 Act that the State can become aware of the existence of the circumstances causing hardship for which it will form an opinion regarding the expediency to resort to the powers under Section 178(2) of the said Act. To our minds, that has been done substantially.”

(21) It may be relevant to notice that in **Jasmer Singh’s** case, this Court distinguished an earlier judgment in **Sanjeet Singh Grewal vs. State of Punjab 2001 (1) PLR 804**, rather placed reliance on another Division Bench judgment dated 26.09.2006 rendered in **CWP No.9060 of 2005 (Amarjit Singh vs. State of Punjab)**.

(22) The decision of this Court in **Amarjit Singh** (supra) was unsuccessfully challenged as the exemption granted under Section 178(2) of 1995 Act granted in that case got the seal of approval from the Hon’ble Supreme Court in the judgment reported as **Amarjit Singh vs. State of Punjab (2010) 10 SCC 43**, laying down that:-

“Power of exemption reserved in favour of the Government under Section 178 of the Punjab Regional and Town Planning and Development Act, 1995 is also intended to relieve hardship arising from the operation of the Act. It is

intended to enable the Government to deal with situations in which circumstances independent of the question of hardship render it expedient to do so by granting exemption. A liberal construction has, therefore, to be placed upon the provisions of Section 178(2) so that exercise of power for good and bona fide reasons is not defeated.”

(23) The question which still needs to be answered is whether the facts and circumstances of the case in hand are similar to those of Jasmer Singh or Amarjit Singh cases (supra)?

(24) Bathinda city is admittedly one of the oldest townships of Punjab State. It came to be inhabited with settlers sometime in the early 19th Century. It is the biggest township in the south west part of Punjab State and has experienced rapid expansion after the year 1970. The planned development of Bathinda City appears to have been carried out in a phased manner as the first phase was developed in the year 1971, second in 1973 and third phase in the year 1978. Due to fast urbanization, there has always been enormous pressure of population, requiring further planned expansion of the city. There could always be a justified danger of disorganized, illegal and haphazard development of the surrounding vacant pockets of land. Such like situation more often than not leads to the growth of unauthorized colonies alluring the desperate people in need of housing.

(25) It has come on record that Chief Town Planner, Punjab vide memo dated 07.02.1995 (R2/1), in continuation of the discussions earlier held, proposed some sites “for the extension of Urban Estates at Bathinda”. Thereafter, the Punjab House Building Development Board asked the

Administrator, Urban Estates, Bathinda to conduct inspections of the sites as were proposed by the Chief Town Planner, Punjab. The process continued thereafter until it culminated into the impugned acquisition. It thus stands established that the process of acquisition commenced well before the 1995 Act came into force on 01.07.1995. It has further come on record that out of the land measuring 185.77 acres acquired vide award dated 06.03.2007, possession of 120.71 acre of land had already been taken and a substantial part of the compensation also stood paid. The possession of the remaining land could not be taken due to the stay orders passed by this Court.

(26) The above-cited reasons leave no room to doubt that the fact situation of the case in hand is somewhat similar, if not identical, to the factual context in which the State Government validly invoked its powers under Section 178(2) in Jasmer Singh or Amarjit Singh cases as its action in both the cases stood the test of judicial scrutiny by this Court as well as the Hon'ble Supreme Court.

(27) This Court thus correctly viewed on 03.05.2011 that the controversy raised in the instant cases stands answered against the petitioners by a coordinate Bench in Jasmer Singh's case. The doubts, if any, have been further removed by the Supreme Court in Amarjit Singh's case (supra).

(28) The second plea taken by the petitioners in their writ petition, namely, challenge to the *vires* of Section 178(2) on the ground that it confers unbridled and unguided powers too does not survive in view of the *dictum* of Apex Court in Amarjit Singh's case where it has been held that the said provision requires liberal construction so that exercise of power for good or *bona fide* reasons is not defeated. Otherwise also, it is difficult to accept that

Section 178(2) clothes the State Government with uncontrolled or sweeping powers. The existence of “undue hardship” or the “circumstances which render it expedient so to do” is a condition precedent to invoke these powers. In other words, the State Government is obligated to assign reasons in writing and such reasons are always subject to the judicial review.

(29) In the light of the above discussion, we do not find any merit in these review applications which are accordingly dismissed.

(Surya Kant)
Judge

19.12.2016
vishal shonkar

(Sudip Ahluwalia)
Judge