

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

CWP No.11251 of 2016 (O&M)

Date of Decision: 17.07.2017

Jaidev Inder Singh and others

---Petitioners

Versus

State of Punjab and others

----Respondents

Coram: **HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE**
 HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sumit Mahajan, Sr. Advocate with
 Mr. Amit Kohar, Advocate
 for the petitioners.
 Mr. Rajiv Kataria, Advocate (in CM Nos.3672-73 of 2017).

Mr. D.S. Sukarchakia, DAG, Punjab.

Mr. Prem Kumar, Advocate
for respondents No.2 and 3.

S.J. VAZIFDAR, CHIEF JUSTICE

Respondent No.3 is the Chairman of respondent No.2-Amritsar
Improvement Trust, Amritsar.

The petitioners have sought a writ to quash an order dated
26.11.2015 (Annexure P-16) passed by respondent No.3 rejecting their
application for change of land use.

Prayer (II) reads thus:

“Writ of Mandamus directing the respondents
to grant necessary permission of use the exempted
land belonging to the petitioners falling in Ajnala
Road Expansion Scheme (Ranjit Avenue) of
Improvement Trust, Amritsar for commercial purpose
as the entire scheme area including the aforesaid land
of the petitioners has already been declared as
commercial and respondents have already charged
development

fee to the tune of Rs.2,65,59,984/- from the petitioners.”

We set out this prayer to make it clear that the impugned order was challenged on the ground that the land in question has been declared as commercial and therefore, the petitioners ought to have been permitted to use the same for commercial purpose. In fact, it was contended before us that there was no question of changing the land use as it was permissible to use the land as commercial purpose in view of the notification issued under Section 43 of the Punjab Town Improvement Act, 1922 (for short 'the PTI Act').

The land in question ad-measures 10.76 acres. The petitioner's father owned an orchard ad-measuring 97 acres. On 21.04.1972, a notification was issued under Section 36 of the PTI Act for acquisition of a larger area which included the petitioners' father's 97 acres. This was followed by a notification dated 19.02.1973 under Section 42 of the PTI Act. The petitioners' father filed a suit for permanent injunction restraining the respondents from taking the possession of his orchard. The suit was dismissed on 22.02.1990. The first appeal against the aforesaid judgment was dismissed by the District and Sessions Judge on 03.12.1993.

RSA No.2634 of 1993 was filed. During the pendency of this RSA, the second respondent passed a resolution No.255 on 06.09.2001, which *inter alia* states that in order to end the long litigation, the Government may be requested to grant approval for exemption of 10.76 acres of land out of the larger area of 97 acres of land. Without considering the same to be a precedent, the conditions mentioned in an earlier resolution No.60 dated 27.03.2001 were to be kept intact. It was further provided that the owners of the land would develop an orchard on 10.76 acres of land and would maintain it. The Government approved the aforesaid

recommendations. The RSA was ultimately disposed of by an order and judgment dated 27.09.2001. It is important to note the following observations in the judgment:

“Mr. Mattewal, learned Advocate General, Punjab, has informed the Court that in the proceedings of the meeting held on August 30, 2001 under the Chairmanship of Local Government Minister, Punjab, regarding resolving of the dispute, subject matter of controversy in the present case, it has been decided to exempt 10.76 acres of land of the appellants, which would be in a compact block. Mr. Mattewal further informs the Court that this 10.76 acres would be in a compact block of fully developed orchard, description whereof would be clear from the report of Local Commissioner (Senior Sub Judge, Amritsar), appointed by this Court vide orders dated October 17, 1999 passed in :CM No.6174-C of 1999 and further depicted in the site plan prepared by the Local Commissioner, attached with the report aforesaid. Mr. Mattewal also states that if, however, as per the scheme, it might not be possible to exempt the said area or part thereof, adjustment shall be accordingly made but the exemption would be of 10.76 acres in a compact block. Mr. Mattewal further states that release order of the land measuring 10.76 acres shall be passed through an appropriate notification.

Even though, earlier in point of time, as would be reflected from interim order dated May 24, 2001, there was consensus to exempt 121 Kanals of land, the appellants accepted this proposal i.e., resolution passed by the Improvement Trust and decision of the Government to exempt 10.76 acres of land. In other words, resolution passed by the Improvement Trust and approved by the Government is acceptable to the appellants, but Mr. Sarin, learned counsel representing them contends that it has been mentioned in the resolution that the appellants will keep the

piece of land so exempted as a garden and that in the very nature of things, even though the appellants might endeavour for that, the land can not remain as an orchard for all times to come. In support of what has been said by the counsel, he relies upon observations of this Court made in order dated July 28, 1998 wherein it was held that the entire suit land i.e., approximately 97 acres was a fully grown orchard. In due course of time, because of vagaries of nature and other factors the fully grown orchard is only in the land, as depicted by the Local Commissioner and, therefore, appellants may not be in a position to keep this exempted land as a garden for all times. If, therefore, the exempted land may not remain a garden at any given time, the Improvement Trust can not claim possession of the land, subject matter of orchard under the acquisition in question.

The contention of Mr. Sarin, as noted above, could not be disputed by Mr. Mattewal or for that matter the counsel representing the Improvement Trust. It is significant to mention that it is no where the condition mentioned in the resolution passed by the Improvement Trust that in case the garden gets extinct at any given time, the Improvement Trust would be able to take its possession on the basis of acquisition under challenge. All that can, perhaps, be interpreted from the resolution passed by the Improvement Trust, pertaining to the condition that the appellants shall maintain the exempted land as garden, is that as long as garden exists, the Improvement Trust shall not be able to re-acquire it and if the same might lose its character as garden, the Improvement Trust or, for that matter, the Government would be at liberty to issue fresh notifications for its acquisition. In any case, as mentioned above, what Mr. Sarin states could not be disputed and this Court is also of the view that what Mr. Sarin contends is correct.

Mr. Kataria, learned counsel representing the

allottees also consents to the resolution passed by the Improvement Trust.

In view of the statements made by learned counsel for the parties as fully detailed above, this appeal is disposed of as having been compromised in view of resolution passed by the Improvement Trust which has since been approved by the Government of Punjab and in view of order passed today. The counsel for the Improvement Trust has placed on record letter dated September 19, 2001 addressed to the Principal Secretary to the Government of Punjab by the Improvement Trust which is accompanied by background of the matter and the resolution. Same be taken on record. The judgment and decree passed by the Trial Court and as confirmed by the first appellate Court is modified to say that the suit of the plaintiffs/appellants with regard to 10.76 acres of land shall stand decreed whereas their suit with regard to remaining land shall stand dismissed.”

Mr. Mahajan, learned Senior Counsel firstly contended that the said 10.76 acres of land can not be maintained as an orchard. He stated that as the land cannot be maintained as an orchard in view of the judgment of this Court, the petitioners are entitled to exploit the land for commercial purposes.

The submission is not well founded. We do not intend expressing any opinion whether the learned Judge could have modified the resolution on the basis whereof, the respondents were willing to exempt the 10.76 acres of land. The judgment has not been challenged and has attained finality. The judgment, however, does not deal with the manner, in which the land can be used even assuming it was never or is not being used as an orchard. It merely provides that in case “Garden gets extinct at any given time”, the Government would be at liberty to issue a

fresh notification for its acquisition and that respondent No.2 would not be entitled to take possession of the land on the basis of the earlier acquisition. Thus, neither the resolution nor the judgment of this Court entitled the petitioners to use the plot in a particular manner even if “Garden gets extinct at any given time”.

Further, the petitioners would not be entitled without anything more to use the land other than as an orchard. Even assuming it was not an orchard when the resolution was passed and the judgment was delivered, it clearly stated that the land is released from acquisition subject to the condition inter alia that the owners would develop an orchard on this plot and would maintain it. Thus, even if it was not an orchard the condition was imposed on the owners to develop the land.

It was then sought to be contended that by virtue of a notification issued 42 of the PTI Act the land has already been converted to commercial use. It is on the basis of this notification that prayer (II), which we set out earlier, was made. It was specifically contended that in view of this notification the land has now been shown to be available for the commercial use and therefore, it is not for the petitioners to seek a change in land use. The petitioners therefore contended that what they sought in any event is to exploit the land commercially.

This aspect was argued at considerable length. Before we delivered the judgment, Mr. Mahajan, learned Senior Counsel gave up this contention. In other words, he does not contend that the notification dated 23.11.2005 (Annexure P-6) pertains to the petitioners' said 10.76 acres of land. In view thereof, the question of use of 10.76 acres of land having been converted as commercial land does not arise. Further in view of

this statement, it is not necessary to consider the various submissions made by the respondents.

Mr. Mahajan, lastly contended that it is impossible to use the said 10.76 acres of land as an orchard. He further states that the entire surrounding area has been developed commercially construction surrounds this plot and therefore, it is not even viable or desirable to use it as an orchard.

We express no opinion in this regard. It is for the authority to consider whether or not to permit the change of land use for orchard.

The petitioners are at liberty to make an application for change of land use in accordance with law. They are also at liberty to make an application for acquisition of the property whether in the alternative or otherwise. If such an application is made, the same will be decided by the respondents in accordance with law.

Needless to add that all the contentions of the parties including the effect of the earlier resolution of the respondents and the judgment are kept open.

The petition is accordingly disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

17.07.2017
atul

Whether speaking/ reasoned:
Whether Reportable:

Yes/No
Yes/No