IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22114 of 2013 O&M)
Date of Decision: March 10, 2017

Mohinder Kaur and others ---Petitioners

Versus

State of Punjab and others ---Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. P.K.Mutneja, Advocate
for the petitioners.

Ms. Munisha Gandhi,Addl.A.G., Punjab with
Mr. Sandeep Kumar Bansal, AAG, Punjab

Mr. Anil Kumar Sharma,Advocate
for respondent Nos. 3 and 4.

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HARINDER SINGH SIDHU, J.

1. This petition has been filed praying for directions to set aside the order dated 07.03.2013 (Annexure P-25) passed by respondent No.2 (Principal Secretary, Government of Punjab, Local Government Department) and the order dated 11.06.2012 (Annexure P-21) passed by respondent No.4 (Chairman Improvement Trust, Hoshiarpur) whereby the claim of the petitioners for release of their property acquired for the Improvement Trust Scheme has been rejected. It is further prayed that the respondents be directed to exempt the property of the petitioners from acquisition.

2. The facts briefly are that vide sale-deed dated 26.06.1973, Lal Singh, husband of petitioner No.1 and father of other petitioners, purchased land comprised in Rectangle No.2, Khasra No.17/2 (8-0), 18/1/2 (3-0) situated in village Purhiran to construct houses and other commercial

buildings. After getting the site plan sanctioned from Municipal Committee, Hoshiarpur, he constructed a residential house and some shops wherein he set up a flour mill. Later he set up a service station for vehicles. He got electricity connection sanctioned for the premises. It was also assessed to house tax by the Municipal Committee. Lal Singh died in 2005.

3. On 29.07.1994, Improvement Trust, Hoshiarpur (for short "the Trust") issued a notification under Section 36 of the Punjab Town Improvement Act, 1911 (for short 'the Act') seeking to acquire a substantial tract of land falling in village Purhiran and Sataheri, Tehsil and District Hoshiarpur. This included the land of the husband/father of the petitioners. He along with other residents filed objections to the aforesaid acquisition, which were rejected. Thereafter notification under Section 42 of the Act was issued on 10/14.07.1995 for acquisition of land comprised in Development Scheme No.2 for an area of 28.83 Hect, in village Purhiran and Sataheri.

4. It is the case of the petitioners that the respondents adopted pick and choose method in exempting land from acquisition. Vide notification dated 12.06.1996 land measuring 1 kanal, 15 marlas out of Rectangale No.3, Khasra No.17/3 (0-10), 18//1/4 (1-15) belonging to Brij Mohan Batra, a Municipal Commissioner was exempted. This fact finds mention in the award dated 11.07.1997. In addition, the said Brij Mohan Batra also got some other land, adjoining the plot of one Ashok Kumar son of Sh. Kewal Krishan exempted from acquisition from Scheme No.2.

5. A challenge to the acquisition on the ground of non-compliance of provisions of Section 38(1) of the Act was negatived in CWP No.14958 of 1997 titled 'Harjit Singh vs. Hoshiarpur Improvement Trust and others' which was dismissed on 07.10.2002. After the dismissal of the writ petition, the respondents issued notices to the inhabitants for taking possession of

their properties. The inhabitants sent written representations to the authorities seeking exemption of their properties from acquisition. The Trust issued public notice dated 18.01.2004 inviting applications from individuals or institutions to consider their cases on individual basis for requesting the Government for granting exemption from acquisition.

6. It is the case of the petitioners that Lal Singh submitted an application dated 28.01.2004 for exemption. The Trust passed Resolution No.20 dated 27.02.2004 and forwarded the cases for exemption from acquisition under Scheme No.2 to the State Government for approval. No action was taken by the Government on the request for exemption. Instead, respondents sent notices to the residents to hand over vacant possession of the properties to the Trust. Petitioner No.2 filed CWP No.2836 of 2006 titled 'Ranjit Singh vs. The Improvement Trust and others' praying for directions to quash the notices to vacate the premises and further directions to the respondents to decide his application for exemption. The said writ petition was disposed of vide order dated 13.07.2006 with a direction to the Secretary Local Bodies, Punjab to take a final decision on the resolution for exemption forwarded by the Trust. It was further directed that if the resolution is accepted by the State Government, then the representation of the petitioner shall be decided by the Chairman, Improvement Trust within three months thereafter.

7. Pursuant to the aforesaid directions, respondent No.1 passed order dated 06.11.2006, rejecting resolution No.20 dated 27.02.2004 of the Trust on the ground that details of the properties sought to be exempted had not been specified in the resolution. The Trust was directed to pass fresh separate resolutions giving clear details of the properties sought to be exempted and forward the same for necessary decision.

8. It is the case of the petitioners that the Trust did not comply

with the directions and no fresh proposal for exemption was forwarded to respondent No.1. The petitioner filed CWP No.23425 of 2010 titled 'Mohinder Kaur and others vs. State of Punjab and others' seeking directions to the respondents to comply with the order dated 06.11.2006 and to release the property of the petitioners as had been done in the case of similarly situated persons. However, the said writ petition was got dismissed as withdrawn vide order dated 24.12.2010 with liberty to the petitioners to avail alternative remedy. The petitioners filed COCP No.52 of 2011 titled 'Ranjit Singh vs. Pawan Adhiya and another', wherein, the Court, vide order dated 19.03.2012 directed the Chairman, Improvement Trust, Hoshiarpur to consider and dispose of the petitioner's claim for release of the land from acquisition by passing a speaking order within two months. It was further directed that in case the petitioner's claim was not accepted on the basis of guidelines stated to have been formulated by the State Government, petitioner would be at liberty to submit an appeal-cum-representation to the Secretary, Department of Local Government, Punjab, who in turn, was directed to dispose of the same in accordance with the Government Policy within four months.

9. It is the case of the petitioners that a detailed representation was submitted to respondent No.3 on 15.05.2012 to release their property as had been done in the case of similarly situated individuals. The said representation was rejected by respondent No.3 vide order dated 11.06.2012 on the ground that the petitioner's building was not 'A' Class building as per guidelines of the Punjab Government in its letter dated 08.09.1976. It was also mentioned that Resolution No.20 dated 27.02.2004 had already been rejected on 06.10.2006.

10. The petitioners preferred an appeal to respondent No.2. In reply it was the case of the Trust that no property not having 'A' Class

construction had been released. The petitioners rebutted this and filed replication bringing on record number of instances of persons, whose property has been released/ exempted from acquisition. The relevant extract from the replication is as under:

> *"xxx xxx However, at this juncture, the petitioner is placing on record instances of some persons whose property has been released/ exempted :*
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> *(a) Documents reflecting the acquisition and/ subsequent release of the Property of one Sh.Kishan Kumar son of Sh.Salag Ram. (Annexure A-13 (colly.)*
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> *(b) Letter No.HIT/2004/794 dated 02.06.2004 whereby land and construction of Sh.Hakikat Singh, Dilabgh Singh, Amrik Singh sons of Ajit Singh has been provisionally released on the payment of Development Charges. (Annexure A-14)*
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> *(c) Revenue record reflecting the acquisition and/ subsequent release of the Property of Sh.Thakur Dass, his wife smt.Kunti Devi and sons Sh.Brij Mhan, Sh.Girish, Sh.Ashwani & Sh.Gulshan, Sh.Goverdhan Lal son of Sh.Bishan Dass and Smt.Arvinder wife of Sh.Ramesh Chand son of Sh.Ram Narain. (Annexure A-15 (colly).*
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> *(d) Revenue record reflecting the acquisition and/ subsequent release of the property of one Sh.Ramesh Kumar and Sh.Sukhjit Singh sons of Sh.Ram Chand, Sh.Rattan Chand, Sh.Ram Kishan, Sh.Bachan Ram sons of Lusi Ram, Kuldip Chand son of Sh.Ram Parkash and Smt.Nirmal Kaur wife of Sh.Nirmal Singh. (Annexure -15)*
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> *(e) Revenue record reflecting the acquisition and / subsequent release of the property of one Sh.Joginder Ram son of Sh.Bhagat Ram, Sh.Jasbir Singh, Sh.Prakash & Sh.Gopal Dass sons of Sh.Mela Ram and Niranjan Singh son of Sh.Prakash Singh. (Annexure A-16)*
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> *(f) A site plan got prepared by the Appellant showing some of the released properties.(Annexure A-17)"*

11. Respondent No.2 vide order dated 11.06.2012 dismissed the appeal without making any reference to the plea of the petitioners regarding discrimination and/or referring to the instances of the persons whose properties as per the petitioners claim had been released.

12. In the written statement filed on behalf of the Trust, it has been stated that the award in respect of the acquired land has been passed on 11.07.1997 and the compensation deposited by the Trust. Possession of the

land was taken on 07.11.2005. The Trust has carved out plots for shop-cum-booths in the said land as per the layout plan and thereafter the said shop-cum-booths were auctioned after due publication in newspapers. The highest bidders have paid the auction amount and also entered into agreements with the Trust. They have even deposited the remaining amount as per terms and conditions of the auction. They have been put in possession and are the owners of their respective properties. It is further stated that as per the survey of the properties on 30.10.1992, on the land of the of the petitioners there was only a Kachha Kotha/structure existing at the time of issuance of notice under Section 36 of the Act.

13. Denying the allegations of the petitioners regarding discrimination, it has been stated that the fact of land measuring 1 kanal, 15 marlas being exempted finds mention in the award dated 11.07.1997. It is also clarified that the exempted land was not adjoining the land of the petitioner as pleaded in the writ petition. That land falls in Rectangale No.3 whereas the land of the petitioners falls in Rectangle No.2. Moreover, out of the total land of 2 kanal 5 marlas exemption was recommended only for 1 kanal 15 marlas. 10 marlas of the land which was found essential for construction of road was acquired. Regarding Resolution No.20 dated 27.02.2004, it is stated that keeping in view the Government Instructions that construction of 'A' Class building can be exempted/ adjusted as per its lay out plan, the said resolution was forwarded to the Government for approval but the same was rejected. It is stated that the exemption, if any, was to be granted only to those persons who fell within the criteria for exemption and as per its lay out plan approved by the Government without any change in the Scheme

14. In Ground No.(vii) of the petition it has been specifically asserted that the respondents had exempted various properties,which were

not 'A' Class and that even vacant pieces of land has been exempted. It has been asserted that it was clear from the Plain Table Survey approved vide drawing No.AP (II) 40/93 dated 20.12.1993 prepared by the respondents that there was no 'A' Class construction existing at the time of acquisition under the Scheme. In reply to this it has been merely stated on behalf of the Trust, that some properties were adjusted as per lay out plan.

15. An additional affidavit dated 23.07.2015 was filed by Rajesh Kumar, Executive Officer, Improvement Trust, Hoshiarpur, wherein it has been explained as per sanctioned Lay Out Plan of Scheme No.2, 80% Residential and Commercial sites were allotted by draw of lots as well as by way of auction. 199 plots were allotted on 9.2.2001 by way of draw of lots. The details of Residential Plots/ Commercial/Institutional allotment is as under:

Residential Plots

Sr. No.	*Total Plots*	*Allotted Plots*	*Unsold Plots*
1.	*571*	*474*	*97*

Commercial

Sr. No.	*Shops/ Sites*	*Allotted Shop/ Sites*	*Unsold Shops/ Sites*
1.	*25*	*15*	*10*
2	*7*	*The Said 7 shops fall in the disputed land.*	

Institutional

Sr. No.	*Institution*	*Allotted Area*
1	*Telephone Department*	*10,620 Sq. Mtr.*

16. Many of the successful allottees have already constructed their residential buildings in the Scheme No.2. The Trust had already provided basic amenities like water supply, sewerage, road, street lights, parks etc and

in this way the Scheme stands fully implemented.

17. We have heard Ld. Counsel for the parties and perused the record.

18. The application for exemption of the petitioners was rejected by the Trust on the ground that the building was not `A' Class and as such was not covered by the guidelines of the Government dated 08.09.1976 and as such the petitioner's case was not even forwarded to the Government vide Resolution No.20 dated 27.02.2004. Before the appellate authority the petitioners had given specific instances where land had been released/ exempted. The appellate authority in its order has not dealt with this issue as to how exemption in their cases was justified while declining the claim of the petitioners. The Trust in its reply to ground No. (vii) where the petitioners had specifically asserted that the respondents had exempted various properties,which were not 'A' Class and that even vacant pieces of land has been exempted has admitted that some properties were adjusted as per lay out plan. It has been specifically admitted that the Trust exempted land measuring 1 Kanal 15 Marlas from its scheme as per the notification dated 12.06.1996. Thus, from the pleadings, it appears that some properties/ construction has been exempted from acquisition, which were not `A' class construction. Reason and justification for the same has not been forthcoming. It is only vaguely stated that they were adjusted as per the lay out plan.

19. The petitioners, and before that their predecessors in interest, have been agitating for exemption of their constructed area since long. The respondents have not even considered their case because of the notification dated 8.9.1976 as per which only `A' class construction can be exempted from acquisition. The petitioners' construction did not qualify as `A' class. The classification of the construction into `A', `B' or `C' for the purpose of

release from acquisition and releasing only `A' class construction has been held to be illegal by Hon'ble the Supreme Court in **(2001) 7 SCC 545 Sube Singh and others Vs. State of Haryana and others.**

20. Thus, we are of the view that the respondents have discriminated against the petitioners in the the matter of considering their case for exemption of their property from acquisition.

21. However, from the written statement filed by the Trust it appears that after taking possession of the land on 07.11.2005 the Trust has carved out plots for shop-cum-booths in the said land as per the layout plan. 80% Residential and Commercial sites have been allotted by draw of lots or by auction. Thus the clock cannot be now turned back. However the petitioner deserves to be compensated.

22. In our opinion the ends of justice would be met if the petitioner is allotted one plot of 120 sq. metres. It is so ordered. Accordingly, he will not be entitled to any compensation to the extent of 120 square metres. The petitioner shall be liable to pay the development charges, if any, leviable in respect thereof. Construction, if any, will be raised in terms of the zoning plan applicable in the area. For the rest of the acquired land he shall be entitled to receive compensation in accordance with law.

23. The petition is accordingly disposed of.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 10, 2017
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Whether speaking/ reasoned:	*Yes/No*
Whether Reportable:	*Yes/No*