

549/3 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-8189-1998 (O & M)

Reserved on: 19.09.2023

Pronounced on: 27.09.2023

RAVI NANDAN AGGARWAL & ORS.

.....Petitioners

Versus

STATE OF PUNJAB AND OTHERS

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Ms. Jigyasa Tanwar, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. Chetan Mittal, Senior Advocate with
Mr. Kunal Mulwani, Advocate
for the respondent-Improvement Trust.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioner(s) in the writ petition (supra) claim the hereinafter extracted reliefs.

(i) Quashing of the scheme framed by the respondent under Section 36 of the Punjab Town Improvement Act, 1922 (hereinafter for short called as the 'Act of 1922'), in terms of resolution No. 29/360 dated 30.12.1994.

(ii) The award dated 09.02.1998 under the relevant statute be quashed and set aside, thus on the ground that it is made

beyond the statutorily prescribed period of two years, since the issuance of the statutory declaration, under Section 42(1) of the 'Act of 1922').

Factual Background

2. That a notification under Section 36 of the 'Act of 1922' became initially published in the Indian Express on 17.01.1995, and, and whereafter it was published on 24.01.1995, and thereafter it was published for the third time on 31.01.1995.

3. Respondent No. 1 through exercising powers conferred under Section 41(1) of the 'Act of 1922' sanctioned the development scheme of area No. 1, Part 1, Pocket 'C', Pathankot. The said scheme was framed by Improvement Trust under Section 24 read with Section 28(2) of the 'Act of 1922'. The notification under Section 42(1) was issued on 16.01.1996.

4. After the issuances of notification(s) (supra), the award became passed on 09.02.1998, assessing therein compensation amount(s), in respect of the construction(s) existing upon the acquired lands.

Contentions of the learned counsel for the petitioners.

5. (i) The learned counsel for the petitioner(s) also contend that though in terms of Section 38(2) of the 'Act of 1922', thus after issuance of notice, the recipient of the said notice, can well avail an opportunity to file objections in writing, thus within a period of 60 days from the service of the aforesaid notice. However, she submits that there is breach done to the above statutory provisions, inasmuch as, no notice of the acquisition proceedings becoming served upon petitioners No. 2 to 5, and, it being served only upon petitioner No. 1. Therefore,

the entire proceedings are argued to stand vitiated.

(ii) After the publication of the impugned scheme, petitioner No. 1 filed objection petition (Annexure P-5). However, the learned counsel for the petitioner(s) contends, that despite repeated requests, the petitioner no. 1 was not provided a copy of the layout plan of the impugned scheme rather for filing proper and better objections theretos. Thus, the mandate of Section 36(3) of the 'Act of 1922' was breached.

(iii) The learned counsel for the petitioners contends that, since the award (supra) was made after more than two years elapsing, since the issuance of notification under Section 42 (1) of the 'Act of 1922' on 16.01.1996, which corresponds to Section 6 of the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894'), inasmuch as, the apposite award being pronounced on 09.02.1998, thereby breach is caused to the mandate enclosed in Section 11-A of the 'Act of 1894', provisions whereof are extracted hereinafter, and resultantly the impugned award is vitiated, and, the same be quashed and set aside. In support of the above argument she relies upon a judgment passed by this Court in case titled as '*Suresh Chand and Others Vs. State of Haryana and Another*, reported as 2004 (1) PLR 40 : 2003(2) PLJ 306 and upon a judgment rendered by the Hon'ble Apex Court, reported in AIR 1992 (SC) 2214.

(Provisions of Section 42(1) of the 'Act of 1922')

42. Notification of sanction of scheme. - (1) The State Government shall notify the sanction of every scheme under this Act, and the trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of section 27

have been fulfilled. (2) A notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned. [Provided that no notification in respect of sanction of a scheme shall be issued after the expiry of the three years from the date of first publication of notice relating to that scheme under section 36,]1

(Provisions of Section 11-A of the 'Act of 1894')

[11A. Period within which an award shall be made. - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.]

(iv) The learned counsel for the petitioner(s) argues, that there was dire necessity cast, upon, the acquiring authority, to, in terms of the relevant provisions of the 'Act of 1894', thus draw a taint free scheme, whereas, the respondent concerned yet drawing the very scheme which became earlier rejected by this Court. Therefore, the re-drawing by the respondent concerned, of the very scheme which became earlier rejected by this Court, thus also requires the same becoming discountenanced by this Court.

(v) In making the above arguments, she has relied upon Annexure P-1. The said annexure embodies a verdict made by this Court on CWP-16161-1990. The subject matter of acquisition of the said writ petition, thus appears to be similar to the subject matter, of acquisition in the instant writ petition.

(vi) In the said writ petition, a challenge was made to the launching of the acquisition proceedings under the 'Act of 1922'. A reading of the operative part of the verdict, as, made on the writ petition (supra), discloses that the writ petition (supra), became allowed. Therefore, the learned counsel for the petitioner(s) argues, that since the very scheme as became earlier successfully challenged, rather has been re-published and/or has also been rather approved. Therefore, the said re-publication of the very same dis-approved scheme, thus inevitably estopped the respondent, from re-publishing or re-making any scheme alike the one which earlier became quashed and set aside.

(vii) Moreover, she contends that the houses of the estate holders existed on the petition lands, but prior to the launching of acquisition proceedings, thereby, the same be exempted from acquisition.

(viii) Further, it has been contended that the award was announced for an amount of Rs. 1,11,15,815/-. The Trust did not have this money to deposit. The Trust deposited 42 Lacs with the respondent No. 3 and took over 45 lacs from some other scheme known as Truck Stand Scheme. It shows that the schemes are framed without the Trust having the requisite money with them for payment.

For the reasons to be assigned hereinafter the above raised contentions in the writ petition are bereft of vigor and thereby they

are rejected.

6. The ground in the instant petition relating to a purported breach being made to the mandate of the verdicts (supra), is grooved in the factum, that despite the said verdicts (supra) casting, an statutory injunction, upon, the acquiring authority to within two years of the making of the relevant declaration, thus make the award, but with the said award remaining un-rendered, thus within the above period of time, thereby the award is vitiated, rather is a ground which warrants rejection.

7. Though the above argument is supported by a judgment made by the Hon'ble Apex Court in AIR 1992 (SC) 2214, wherein, it has been expostulated, that the provisions of the 'Act of 1894' as amended upto date are applicable to the proceedings drawn under the 'Act of 1922'. Therefore, the necessity for the drawing of an award by the Collector concerned, thus within two years from the date of issuance of a declaration, made under Section 42(1) of the 'Act of 1922', as, corresponds to Section 6 of the 'Act of 1894', rather was required to be complied, thus for validating the award.

8. However, even if assumingly the award is purportedly made beyond a period of two years, since the issuance of the relevant declaration, yet the making of the award, thus with more than a period two years elapsing since the making of the relevant declaration, rather does not vitiate the award.

9. The reason becomes comprised in the factum that, since in the reply, on affidavit, furnished to the writ petition, it is mentioned, that since the approved scheme, was prepared in relation to a larger expanse of land, wherein, became included also the estate of present

petitioner(s). Moreover, since it has been further detailed in reply, on affidavit, that one of the land owners Basant Ram, son of Sardha Ram proceeded to institute CWP No. 11870-1998, before this Court, and also filed a civil suit, with regard to exemption of the relevant portion of land, and, wherein an ex parte injunction was issued vis-a-vis the said Basant Ram rather not being dis-possessioned, from the suit lands, except in accordance with law.

10. In addition, since through an order made on 31.10.1996, the aforesaid injunction was made absolute. Consequently, it is contended that since subsequently the said Basant Ram filed another suit, on 04.11.1996, with regard to his acquired lands, and on a contest being made by the Improvement Trust, the learned trial Court refused to grant an injunction. Resultantly the relevant parcels of the lands of the said Basant Ram, became subjected to lawful acquisition(s).

11. Consequently, it is contended that since for the above period of time, the disputed lands remained under litigation, thereby, since the respondents became restrained from assuming possession over the acquired lands. Resultantly, when the said period, thus spent in litigation, is required to be excluded, and/or thereby, the respondent concerned rather became tenably precluded, to within a period of two years, since the making of the relevant declaration, thus make an award.

12. The above made argument by the learned counsel for the respondent is a validly made argument. The reason being that since within a period of two years, as mandated in the relevant statute, the disputed lands remained under litigation, thereby, when the said spent period in litigation, is thus, required to be excluded or condoned, from

the period of two years, as mandated in the relevant statute, rather for

making an award, since the issuance of the apposite declaration.

13. Consequently the non makings of an award within statutorily mandated period of two years, since the issuance of the apposite declaration, thus is condonable and/or is not required to be construed, as the relevant computing factor, nor thereby the award can be termed to be vitiated nor the award can be quashed and set aside.

14. Further, the argument with regard to non service of notice upon the estate holders (petitioners No. 2 to 5), is merit-less, as it is evident on a reading of the reply, furnished to the petition by the respondent, that the said notices were issued upon all the land owners, and, also became validly served upon all of them thus on 16.04.1995. Further, thereby, thus the relevant mandatory statutory provisions of the 'Act of 1922', thus become not breached.

15. Furthermore, the argument, that the respondent concerned was estopped from re-publishing or re-making any scheme alike the one which earlier became quashed and set aside also does not appeal to the judicial conscience of this Court, as it is declared in the reply, on affidavit, that the lapses and/or statutory breaches which occurred in the earlier quashed scheme, thus became never repeated in the subject matter approved scheme. The said contention evidently remains un-repelled.

16. In the face of the above, the argument of the counsel for the petitioner(s), that given the similarity or identity of the subject matter in the earlier writ petition vis-a-vis the instant writ petition, thereby the drawing of the very same scheme, is required to be also quashed, rather is a merit-less argument and is rejected.

respondent suggests, that the relevant objections as became raised by the estate holders, were thoroughly considered and became rejected, thus through a reasoned order. Therefore, any grievance raised in the writ petition, as, relating to either no objections being invited, nor any valid decision being made thereons, thus becomes an infirmly raised argument and is liable to rejected.

18. Moreover, it is detailed in the reply, on affidavit, that after the issuance of notification under Section 36 of the 'Act of 1922' a detailed layout plan was prepared by the engineering cell of the acquiring authority, and, it being also made available for inspection thereof, rather by the estate holders concerned, but no request was made by the estate holders, for making inspections thereof. Therefore, the argument raised by the counsel for the petitioners, that the request for inspection of the layout plans, became declined, becomes a merit less argument and deserves rejection. Even otherwise, qua the aspect of drawings or re-drawings of layout plans, by the Engineering Cell of the acquiring authority, this Court by exercising its review jurisdiction cannot make any interference therewith, as the said drawings or re-drawings of layout plans, but squarely falls within the domain of the expertise of the experts, employed in the Engineering Cell of the acquiring authority.

19. The argument (supra) with regard to exemption from acquisition vis-a-vis houses existing, on the acquired lands, thus prior to acquisition is also amenable for rejection. The reason becomes comprised in the factum, that from a reading of Annexure R1/1 as appended with the paper book, it is revealed, that the Trust, shall

exemptions of properties.

- (i) No vacant plot shall be exempted.
- (ii) Exemption of built up properties shall be allowed on conditions given below:
 - a) *Provided the building was constructed before the preliminary notification of the scheme.*
 - b) *Subject to its fitting in the overall layout of the scheme, and;*
 - c) ***The standard of construction should be 'A' Class.***

20. Consequently, since the exemption(s) were accordable only to class 'A' construction(s), and, when on a perusal of the reply, on affidavit, it becomes revealed, that the houses of the petitioners which were found to be A-class construction and integrable in the scheme, thus have been exempted. However, the vacant land which formed part of the scheme has been duly acquired.

21. Therefore, also the relevant declining(s), vis-a-vis, the releaseable construction(s) existing on the petition lands rather are well founded, upon, the relevant instruction(s). Thus, the petitioner(s) also cannot seek exemption(s) on the above plank.

22. Further, on a reading of para No. 12 of the reply, to the writ petition, it is revealed that after pronouncement of the award, the entire payment of the compensation amount, except the payment for the exempted portion, was duly deposited by the Trust. Therefore, it cannot be said that the respondents had no money to make payments of the determined compensation amount nor can they argue that the purpose of acquisition was an ill made purpose or an ill thought purpose.

23. However, even the grievance, if any, of non deposit of the

entire determined amount, can be mitigated upon a mandamus being made upon the respondent concerned, vis-a-vis the said compensation amount being deposited before the authority concerned, so that, therefrom release(s) or disbursement(s) can be caused to the estate holders concerned. The said mandamus is accordingly made.

24. However, if yet in terms of the reply dated 28.05.2011, furnished to the writ petition by the respondent, in connected case CWP-7090-1998, there is yet lawful availability to the petitioner(s) to secure re-housing, thereupon, respondents may proceed to lawfully consider the said claim.

Final order of this Court.

25. In aftermath, this Court finds no merit in the writ petition, the same being completely frivolous, thus is required to be dismissed with costs. Therefore, the same is dismissed with costs of Rs. 50,000/- upon each of the petitioners to be forthwith deposited by them with the Treasurer of the **“Punjab and Haryana High Court Employees Welfare Association”**.

26. The impugned notification(s) and the consequent thereto award are maintained and affirmed. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

27.09.2023

kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No