

549/5 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-7318-2001

Reserved on: 19.09.2023

Pronounced on: 27.09.2023

OMESH CHANDER 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: Mr. Amit Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate
for the petitioner(s).

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) 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') and
consequent thereto 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'.

(ii) A direction/mandamus be made upon the respondents restraining them from ousting the petitioner(s) from the houses (court yard, lawn and a kitchen garden) which are in their occupation/possession and to allot them houses under the relevant re-housing scheme, thus for ensuring their rehabilitation.

Factual Background

2. That a notification under Section 36 of the 'Act of 1922' became initially published on 10.02.1995 and whereafter it was re-published on 17.02.1995, and thereafter it was published for the third time on 24.02.1995.

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 petitioner(s).

5. (i) The learned counsel for the petitioner(s) contend that though in terms of Section 38(2) of the 'Act of 1922', thus after issuance

to file objections in writing, thus within a period of 60 days from the service of the aforesaid notice. However, he submits that there is breach done to the above statutory provisions, inasmuch as, no notice becoming served upon the estate holders concerned, nor any objections become invited nor being presented. Also, the notification under Section 36 of the 'Act of 1922' was not published in the newspapers or in the locality. Therefore, the entire proceedings are argued to stand vitiated.

(ii) Further, notices were served upon the petitioners to present their objections with respect to the compensation and the petitioners filed their replies to the same.

(iii) However, the petitioner(s) claim that there is no necessity for making acquisition(s) of the lands and if the said acquisition(s) are made, thereupon they be provided alternative houses. In raising the above plea the petitioners relied on Sections 26 and 27 of the 'Act of 1922', provisions whereof are extracted hereinafter.

26. Rehousing scheme. - *Whenever the trust deems it necessary that accommodation should be provided for persons who are displaced by the execution of any scheme under this Act, or are likely to be displaced by the execution of any scheme, which it is intended to submit to the State Government for sanction under this Act it may frame a rehousing scheme for the construction, maintenance and management of such and so many dwellings and shops as ought in the opinion of the trust, to be provided for such persons.*

27. Rehousing of displaced resident house-owners. - *Any resident houseowner who is likely to be displaced by the execution of any scheme under this Act, may apply to the trust to be re-housed and no such scheme shall be put into*

execution until a re-housing scheme as provided for in section 26 for the re- housing of such resident house-owners as may apply under this section has been completed.

Explanation. - The demolition of a portion of a dwelling house which renders the remaining portion uninhabitable shall be deemed to be a displacement of the person or persons residing in the said dwelling house.

(iv) The learned counsel for the petitioners further contend 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 he 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.]

(v) Further, he contends that even if assumingly the launched acquisition proceedings were lawful, yet the mandatory provisions, as cast in Section 26 and in Section 27 of the 'Act of 1922' rather becoming breached, inasmuch as, despite the statutory provision (supra) making expostulation qua re-housing of the petitioner(s), yet the benefit of the said statutory provision, rather remaining un-assigned, to the present petitioner(s).

(vi) In support of the above contention, he submits that a

Singh and Others Versus State of Punjab and others', reported as 1974-PLJ-260, has declared therein, that if a case is covered by Section 26 of the Act, thereby a resident house-owner, is evidently displaced and if he has applied to the Improvement Trust to become re-housed, and, in case his request remains un-acceded to, thereby, the scheme framed by the Improvement Trust rather cannot be put into execution, thus until a re-housing scheme for the rehabilitation of such displaced person rather is framed.

(vii) Moreover, he 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.

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 in the connected writ petition CWP-11870-1998, which the learned State counsel submits that the said reply is also adopted in the instant writ petition, therein, 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 unsuccessfully 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 exparte 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 or qua non publication of the notifications (supra), 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

the land owners and also became validly served upon all of them.

Further, the notification(s) (supra), as stated in the reply, to become duly published in the newspapers 'Indian Express' and in 'Jansata' respectively on 17.01.1995, 24.01.1995 and on 31.01.1995, and, that the notices were also sent to the Municipal Council and Medical Officer, for pasting the same on the notice board, thereby, thus the relevant mandatory statutory provisions of the 'Act of 1922', thus become not breached.

15. The learned counsel for the petitioners also argued that there was necessity in terms of Section 27 of the 'Act of 1922', to make provisions for re-housing of the present petitioners, as the assigning of the benefit of the statutory provision (supra), is argued to be mandatory, thus in terms of Section 42(1) of the 'Act of 1922'. However, the learned counsel for the petitioners cannot well espouse even the above contention.

16. The reason becomes grooved in the factum, that in the reply, on affidavit, it has been mentioned that no request or application was submitted by the petitioners rather for the formulation of a re-housing scheme. Therefore, when a request for the said purpose was required to be made before the authorities concerned, whereas, the said request not becoming made, thereby, the petitioners are deemed to waive or abandon the said claim. Resultantly they are estopped to argue, that there was any violation of Section 27 of the 'Act of 1922'.

17. 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 connected petition CWP-11870-1998, it is revealed, that

the Trust, shall observe the hereinafter extracted conditions rather for recommending 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.***

18. 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.

19. 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.

20. Further, on reading of para no. 16 of the paper book, there occurs an averment that the petitioner though has not accepted the compensation but has filed a reference petition under Section 18 for enhancement of compensation assessed by the Land Acquisition Collector, as the said application has to be filed within the period prescribed under Act.

21. The effect of the above, is that, thereby the petitioners concerned are deemed to accept the validity of the launching of the acquisition proceedings, and thereby they are rather estopped from challenging the validity of the launching of the acquisition proceedings.

22. 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.

23. 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”**.

24. The impugned notification(s) and the consequent thereto award are maintained and affirmed.

25. 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