

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 19.01.2024
Pronounced on: 05.02.2024

1. CWP-16232-1994

OM PARKASH (DECEASED) THROUGH LRs. AND ORS.
.....Petitioners

Versus

THE STATE OF PUNJAB AND ANR.Respondents

2. CWP-16455-1994

SANGEETA AND ORS.Petitioners

Versus

THE STATE OF PUNJAB AND ANR.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Argued by: Mr. Ashwani Chopra, Senior Advocate with
Mr. Vidul Kapoor, Advocate
for the petitioner(s).

Mr. Maninder Singh, DAG, Punjab.

Ms. Kavita Arora, Advocate for
Mr. S.C.Pathela, Advocate
for respondent No. 2 – M.C. Bathinda.

SURESHWAR THAKUR, J.

1. Since both the writ petition(s) relate to common questions of law, and also with the facts therein being identical, therefore, the same are being disposed of through a common order.

making of a lapsing declaration in respect of the subject lands.

3. For understanding the import of the above claim, it is but necessary to extract the provisions incorporated in Section 192 (1)(c) of the Punjab Municipal Act, 1911 (hereinafter for short called as the 'Punjab Act of 1911') as thereons the above claim becomes rested. The said provisions are extracted hereinafter.

192. Building scheme.- (1) *The committee may, and if so required by the Deputy Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may among other things provide for the following matters, namely :-*

(a) the restriction of the erection or re-erection of buildings or any class of buildings in the whole or any part of the municipality, and of the use to which they may be put;

(b) the prescription of a building line on either side or both sides of any street existing or proposed; and

(c) the amount of land in such unbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed [thirty-five per cent,] and the amount transferred without payment shall not exceed [twenty five per cent], of any one owner's land within [such unbuilt area.]

(2) xxxx

(3) xxxx

(4) xxxx

(5) xxxx

4. The Hon'ble Apex Court in a judgment rendered in case titled as ***Yogendra Pal Vs. Municipality, Bathinda: 1994 AIR (SC)***

proceeded to in paragraph No. 30 thereof, declare the said provisions to be ultra vires the Constitution of India. Para 30 of the verdict becomes extracted hereinafter.

30. As held above, the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 and of Section 203(1)(c) of the Haryana Municipal Act, 1973 are violative of Article 14 of the Constitution. Hence the acquisitions of the appellants' land under the respective provisions were bad in law. The question still remains as to what relief the appellants can be granted. It is now well-settled by the decisions of this Court beginning with I.C. Golak Nath and Ors. v. State of Punjab and Anr. that the Court can mould the relief to meet the exigencies of the circumstances and also make the law down by it prospective in operation. We are informed that till date the Municipal Committees in both Punjab and Haryana States have similarly acquired lands for their respective town planning schemes and in many cases the schemes have also been completed. It is only some of the land-owners who had approached the courts and the decisions of the courts have become final in many of those cases. It would not, therefore, be in the public interest to unsettle the settled state of affairs. It would create total chaos and an unmanageable situation for the Municipal Committees if the said provisions of the respective statutes and the land acquisitions made thereunder are declared void with retrospective effect. We, therefore, propose to declare that the concerned provisions of the two enactments would be void from the date of this decision.

5. Though, a reading of the above extracted paragraph, but unfolds, that the declarings therein, thus as ultra vires rather the above provisions being prospective and not retrospective.

6. Nonetheless, the learned counsel for the petitioner(s) yet

rested his writ claim (supra), through his making the hereinafter contentions.

7. That assuming that the declaration (supra), as made by the Hon'ble Apex Court in verdict (supra) is to hold prospective and not retrospective effect, but yet when the provision (supra) becomes embodied in a mandatory phraseology, thereby they required strict compliance thereto becoming made by the respondent concerned. However, he submits that,

a) without payment of any compensation to the petitioner, the respondent No. 2 has assumed unauthorized possession of 70 % land of the petitioner(s), thereby, infringing the mandate carried in Section 192 (1) (c) of the 'Act of 1911'.

b) That since the relevant scheme has not been finalized/implemented for 17 years, thus commencing from 1977 till 1995 thereby the said scheme is deemed to have become lapsed.

c) That despite a mandatory duty becoming cast upon the respondent concerned to consider the objections raised by the land losers concerned, yet neither the respondent concerned, causing any opportunity of personal hearing to the petitioner nor also theirs making a well contemplated reasoned decision rather on such objections. Therefore, it is contended that the acquisition(s), as made under the 'Punjab Act of 1911' are deemed to have lapsed in terms of the verdict (supra).

d) That since possession over the subject lands remains unassumed till now thus by the respondent concerned, thereby, the acquisition of the subject lands is deemed to have become lapsed, as

lands. Resultantly, the petitioner(s) are entitled to the making of a lapsing declaration vis-à-vis the subject lands, and, besides qua them.

Factual background of the case.

8. Before proceeding to analyze the above made submissions by the learned counsel for the petitioners, it is but necessary to delineate the facts relating to the instant writ petition(s).

9. For the sake of brevity, the facts relating to CWP-16232-1994 are taken here for deciding the instant controversy.

10. The Petitioner No. 1 along with petitioner No 2 to 4 are vide registered sale deed dated 20.10.1959 in joint ownership of 8 Bighas one biswa of the land ie. 2/7 share out of 28 bigha 4 biswa comprising in Khasra No 1808/2 in Village Bathinda. Mutation of land was sanctioned on 06.06.1963. The petitioners set a garden in the land measuring 8 bigha one biswa. The petitioners No. 2 to 4 became co-owners in the aforementioned land by virtue of a decree dated 29.11.1991 (Annexure P-1).

11. The Trust issued Public Notice through Publication in Newspaper on 29.05.1977, on 20.04.1978 and on 25.04.1978, whereby objections were called from the concerned persons, regarding the development of the land, in question which was unbuilt at that time. The resolution No. 1071 dated 06.11.1981 was sent for approval by the Municipal Council Bathinda, enclosing therein, the drawing dated 11.09.1981. As per the approved scheme, the ownership of the land was to remain with the land owners and only a part of their land was to be utilized for development purpose.

12. The petitioners filed objections on 02.02.1977 (Annexure

04.05.1978. The Town Planning Scheme was amended keeping in view the objections and thereafter the scheme was adopted by the Municipal Committee Bathinda, through its making a resolution bearing No. 307 dated 09.07.1980. The scheme so adopted was sent to the Government for approval and the same was notified by the Government vide notification dated 04.05.1983 (Annexure R-1).

Submissions of the learned counsel for respondent No. 2.

13. That the above extracted provisions, as carried in the 'Punjab Act of 1911', exemplify that vacant lands or lands occurring but in any unbuilt area, thus become enjoined to be transferred to the Committee, hence by owner, rather for public purposes including use as public streets, but either on payment of compensation or otherwise. Therefore, the counsel for the respondent No. 2 submits, that since the scheme sanctioned, thus in terms of provisions (supra), was only for development for roads, parks, besides when the said scheme has been implemented in the year 1983. Therefore, besides when the ownership over such lands, has not been snatched from the petitioner(s) but only user of the lands is limited for the development of roads, parks and streets.

14. Consequently, it is argued that with the implementation of scheme taking place in the year 1983 and the writ petition becoming filed belatedly therefrom in the year 1994. Resultantly, thereby the writ petition is hit by the vices of gross delays and latches.

15. That also with the contemplation occurring in clause (1)(c) of Section 192 of the 'Act of 1911' thus makes echoings, that unbuilt area or vacant area, is amenable to be transferred to the Committee, for

otherwise.

16. Therefore, she contends that when the transfers of the subject lands has taken place in the year 1983, in favour of the respondent concerned, and also when the relevant approved scheme through a resolution No. 1071 being made on 06.11.1981, thus has resulted in the said scheme being implemented in the year 1983.

17. In sequel, she submits that, thus when the proviso within the relevant clause (c) restricts the area of the transferable land upto 35% of the land holdings of the land losers, besides restricts or curtails the amount of property transferred, thus without payment but upto 25%, of "*any one owner's land within such unbuilt area*". Thus, she submits that the import of the statutory coinage of '*any one owner's land within such unbuilt area*' rather is none other than the individual land holdings of the land owners rather being the ready reckoner, and, that it does not require any employment thereof, vis-à-vis, the entire undivided land of the land losers concerned.

18. Contrarily, she submits that since the petitioner(s) shares in the joint ownership in the subject lands, is to the tune of 34.15 percentum, and, out of the same upto 25 % area was taken without the payment of compensation. Thus, when the (supra) is within the limit of percentum (supra) of each of the co-owners individual shares, in the apposite joint land, thereby, reiteratedly makes the respective individual shares of the co-owners, rather being within the permissible restrictive limit of 25%, thereof.

19. She further submits that qua 9.15 % of land in excess of the apposite ceiling limit of 25 %, thus compensation has been

concerned, thereby no breach is caused to the provision (supra) nor any unjust expropriation of the lands has been made.

20. Therefore, she reiteratedly submits that with the above percentum of the unbuilt area, as falls to the individual shares of the co-owners, is but within the prescribed statutory limit of 35 % thereof. Resultantly she submits that no breach is done to the first segment of the proviso of Section 192 (1)(c) of the 'Punjab Act of 1911', inasmuch as, the respondent not assuming possession of each of the individual co-owners' share in the joint lands rather beyond 35 % thereof.

21. She also further submits that no further breach is done to the further limit in the proviso (supra), inasmuch as, the one relating to only upto 25 % of '*any one owner's lands within such unbuilt area*', thus possession can be transferred to the Committee, but without payment of compensation, as was otherwise required to be assessed, vis-a-vis, each individual co-owners.

22. In sequel she submits that non payment of compensation to each of the individual co-owners, especially in respect of their respective individual shares, thus not exceeding 25 %, does not result, in acquisition proceedings being flawed and/or vitiated nor the petitioner(s) are entitled to the making of a lapsing declaration.

23. As a corollary thereof, she submits that as such any transfer to the Committee of the percentum (supra) of the unbuilt land of the co-owners concerned, whereons, parks, streets have been raised, thereby there has been no breach to the limit of 25 %, rather on applying to each co-owner's concerned share nor compensation was required to be assessed vis-à-vis each individual owner.

there is no strength in the contention raised before this Court, by the learned counsel for the petitioner(s), that no opportunity of hearing became assigned to the petitioner(s) nor that the objections became not decided, rather she submits that not only the petitioner(s) filed objections, but also an opportunity of hearing became granted to them, besides the objections were well considered and also became rejected, resulting in the adoption of the scheme by the Municipal Committee Bathinda through resolution No. 307 dated 09.07.1980.

25. It is specifically mentioned that the said objections, were decided by the Administrator, through an order made thereons on 04.05.1978.

26. That in view of the affidavit dated 03.11.2022, furnished with projections therein that 96% to 97% development of the scheme area has been completed in toto, and all the parks in the scheme area thus have also been developed. Therefore, it is contended that when the Hon'ble Apex Court in the above extracted paragraph occurring in the verdict (supra), when yet has made the said, apposite declaration to be prospective and not retrospective. Therefore, she submits that no retorspectivity can be assigned to the declarings therein, as ultra vires vis-a-vis, the statutory provisions (supra), as thereby the completed development works would be disrupted and would result in chaos emerging.

27. Moreover, she also submits that when in the above paragraph also after the Hon'ble Apex Court, referring to a verdict made by the Hon'ble Apex Court in **I.C. Golak Nath Vs. State of Punjab, 1967 (2) SCR 762**, thus had moulded the relief to mete the

become implemented, as has happened in the instant case.

28. Reiteratedly, when but for obviating the eruption of chaos and an un-manageable situation for the Committees, thus the Hon'ble Apex Court, did not undo, the effect of the implemented therein scheme, as became so implemented prior to the declaration therein, as ultra vires of provisions (supra). Therefore, she submits that in terms thereof, when the scheme has been implemented in the year 1983, as such, to avoid prevalence of chaos and also to avoid the Municipal Committees being put in an un-manageable situation, thus, no retro activity can be assigned to the declarings therein, as ultra vires rather the provisions (supra).

Analysis of the submissions made by the learned counsel for the parties and reasons for rejecting the submissions of the learned counsel for the petitioner(s).

29. For the reasons to be assigned hereinafter, this Court agrees with the submissions of the learned counsel for the respondents, and disagrees, with the submissions of the learned counsel for the petitioner(s). Therefore, this Court dismisses the writ petition(s).

30. Initially, the foundation of the claim raised by the petitioner(s) for seeking the makings of a lapsing declaration, vis-a-vis the scheme (supra), irrespective of retrospectivity being not assignable to verdict (supra), is founded, on non adherence, to the principles of natural justice, by the respondent concerned, inasmuch as, no opportunity of personal hearing being granted to the objectors, thus on their objections, and/or, the objections being neither considered nor becoming decided through, a well reasoned decision. The said contention is rejected.

31. The reason for rejecting the said contention is founded, on the reply, on affidavit, as well as written synopsis, furnished to the said effect by the respondent concerned, wherein, it is clearly spelt out, that the objectors were called for hearing on 28.04.1978 and on 04.05.1978, thus in the Office of the Administrator, the then Deputy Commissioner, Bathinda, and that the said objections became well considered and also became rejected on 04.05.1978.

32. Since no evidence to deny the above factum has been adduced by the petitioner(s). Therefore, the above argument becomes bereft of vigor and as stated (supra) is rejected.

33. The submission addressed before this Court by the learned counsel for the petitioner(s) that since possession of the subject lands remains with the land losers concerned, thus thereby the petitioner(s) are entitled to claim the making of a lapsing declaration, but also is a mis-founded argument.

34. The reason for making the above inference spurs, from the factum, that the said argument is founded, upon, the principles of law established by the Hon'ble Apex Court in case titled as **Indore Development Authority v. Manohar Lal and others etc., AIR 2020 SC 1496**, which are inapplicable to the acquisition proceedings, as became launched under 'the Punjab Act of 1911'.

35. Moreover, for further reason, that implemented approved scheme as drawn in terms of a prospectively made declaration, qua the provisions (supra), thus being ultra vires, rather has not disrobed the ownership of the petitioner(s) over the subject lands, but only has resulted in handing over of possession thereof, to the respondent

concerned, but for the purposes of public amenities (supra), becoming created thereons, and, to which also the petitioner(s) would become entitled.

36. If so, besides when for the hereinafter made reasons, the declaring as ultra vires of the above provisions, is to be assigned prospectivity, even vis-à-vis the instant *lis*.

37. Significantly, when but for obviating the eruption of chaos and an un-manageable situation for the Committees, thus the Hon'ble Apex Court, did not undo, the effect of the implemented therein scheme, as became so implemented prior to the declaration therein, as ultra vires of provisions (supra). Therefore, when the scheme has been implemented in the year 1983, as such, to avoid prevalence of chaos and also to avoid the Municipal Committees being put in an un-manageable situation, thus, no retro activity can be assigned to the declarings therein, as ultra vires rather the provisions (supra).

38. Moreover, when an incisive reading of the above provisions necessarily reveals, that the acquisition(s), as made thereunders, requires that in-so-far- as unbuilt, and vacant areas are concerned, that such areas, being transferable to the Committee, for employments thereons of a public purpose, and but with a rider, that such maximum transferable unbuilt/vacant areas, for employing thereons the public purposes, thus not exceeding 35 %, and, that the amount of transferable area, but without payment of compensation not exceeding 25 % yet with a further restriction, thus carried in the statutory coinage "*of any one owner's land within such unbuilt area*".

39. Consequently, it has now got to be determined, whether the

the relevant public purpose, and that too in the year 1983, and, the challenge, to the said implemented scheme becoming made in the year 1994, thus requiring the employments thereons, of the apposite rider, appertaining to the maximum transferable area, to the Municipal Committee, from the land losers, rather not exceeding 35 %, and/or, also from the said cap of transferable unbuilt area, thus only 25 % thereof being transferable, thus without payment of compensation.

40. To the considered mind of this Court, an interpretation, is to be made to the statutory coinage of '*any one owner's lands within such unbuilt area*'. The signification of the said statutory coinage, is that, the legislature in its wisdom, has made the said coinage therein, but both, with a mindful and purposeful object, respectively relating to the maximum percentum of transferable lands, and, further that 25 % thereof, shall be without compensation, and, that in case the amount of transferable land exceeds 25 %, then payment of compensation being made to the land losers concerned.

41. Nonetheless, the import or the subtle nuance of the statutory coinage, is but that percentums (supra), rather being applicable to the estates of each individual land loser concerned. However, the same being not applicable to the entire quantum of land held in joint ownership or co-ownership of the land losers concerned.

42. If so, when in the instant case, the total quantum, of the lands brought to acquisition of the land owners is comprised in an area of 34.15 %. Therefore, when the above percentum of land transferred to the Committee, is within the maximum prescribed transferable percentum of land, as enshrined in the proviso to Section 192 (1)(c).

CWP-16232-1994). Consequently, when on dividing 34.15 by 4 ($34.15/4 = 8.5$). Now from amongst the said individual percentum of land, as assignable to each of the co-owners in the joint land, but obviously is less than 25 % of the land, as has been transferred to the Committee, besides when the said transfer is without compensation. However, given the signification (supra), as made to the statutory coinage, thus therebys, the said respective percentums, do not attract thereons, the speakings in the second part of the proviso (supra), inasmuch as, that compensation is to be paid, when the transferred land is beyond 25 %, as the unbuilt areas falling to the individual shares of each of the land owners is less than 25 % from amongst the maximum transferable limit of 35 %.

44. Moreover, on a perusal of reply, on affidavit, it is revealed that out of the total 34.15 % of acquired land, 25 % thus has been taken without compensation, and, for the remaining area of about 9.15 % rather compensation has been offered. Therefore, no breach has been caused to the mandate (supra).

45. Reiteratedly, in making the above conclusion, this Court garners support from the echoing of '*any one owner's land within such unbuilt area*'. The signification thereto, is that, none other than the individual shares or the individual percentum of the share of each of the co-owner, in the joint land, rather becoming the ready reckoner or the relevant parameter for employing thereons the said rider embodied in the provision (supra).

46. The reason for drawing the above conclusion, is but, arousable, from an in-depth interpretation being made to the coinage, as

but not required to be employed, to the total land of the co-owners concerned. Contrarily, the said rider is to be employed to the individual shares or the individual percentum of shares of the individual co-owners.

47. The reason for making the above conclusion, also becomes marshalled, from the factum that even if the dis-memberment of the joint estates taking place, thereupon, thus the quantum of land which would become allotted to each of the individual owners rather would ultimately be within the transferable land limits, for the relevant purposes, but with or without compensation, in terms of the proviso to Section 192 (1) (c) of the 'Punjab Act of 1911'.

48. If so, the statutory coinage '*of any one owner's land within such unbuilt area*', becomes amenable even at the stage of the joint estate remaining dismembered, to be thus assigned a connotation, vis-a-vis, the same appertaining to the individual shares of the co-owners in the joint lands, as thereby the said connotation, but would be in tandem with the quantum or percentum of land, which becomes ultimately allotted on happening of dismemberment of the joint estates.

49. Resultantly therebys on transfers taking place of the individual shares in the lands of the co-owners concerned, rather did not require that compensation be assessed vis-à-vis the apposite therein separate individual shares, as such, individual shares did fall within the restrictive limit of 25 % of the transfer limit of land without compensation.

50. Lastly, it is stated by the learned counsel for the petitioner(s) that 70 % of the area out of the total area of 8 bighas 1

mandate (supra), whereas, the respondents in their reply on affidavit have mentioned that only 34.15% area of the petitioner(s) land has been acquired. He rests his submission on the factum that the above calculations are not based upon any demarcation report but the said contention is also rejected.

51. The reason for making the above conclusion stems, from the factum, that though the petitioner(s) raised the said objections in their respective objection petition(s) but the said objections became well decided against them.

52. Moreover, when at the time of filing of such objections, it was also incumbent upon the petitioner(s) to ensure that the said objections become validly rested upon a well made demarcation of the disputed sites. Therefore, for wants of, a validly prepared demarcation report becoming appended with the relevant objections, thereby, the raising of the said claim in the instant writ petition(s), and that too after more than ten years, since the implementation of the scheme (supra), thus makes the said claim to become hit by the vices of delay and laches, but also when no supporting thereto demarcation report became filed both before this Court besides before the Collector concerned, therebys too, the said raised claim is pretextually raised.

FINAL ORDER BY THIS COURT.

53. In aftermath, this Court finds no merit in the writ petition(s), and, with the above observation(s), the same are dismissed.

54. No order as to costs.

pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

05.02.2024

kavneet singh

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