TEJA SINGH AND ORS. ETC. A

v.

STATE OF PUNJAB AND ANR.

MARCH 1, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.] B

Punjab Town Improvement Act, 1922: Sections 36, 38, 41 and 79(2)(a).

Development Trust—'Development-cum-Housing Accommodation Scheme'—Approval by State Government—Publication—Modification of C *scheme by Trust after hearing objection of parties—Held modified scheme is not required to be re-published.*

Notice—Development Scheme—Acquisition of land for—Notice on one of the co-owners when more than one have interest in the land is sufficient service of notice on other co-owners. D

By a resolution dated 24th March, 1976 the Ludhiana Improvement Trust framed a Development-cum-Housing Accommodation Scheme which was approved by the State Government. The Trust after hearing objections, passed a resolution modifying the scheme initially passed on March E **24, 1976 and sent it for sanction of the State Government. The approved scheme was published on July 2, 1976 and the Government sanctioned it as required under section 41 of the Punjab Town Improvement Act, 1922. The appellants and some other challenged the scheme before Punjab & Haryana High Court but on concession made by State Counsel, a Division Bench of the High Court quashed the scheme qua the petitioners only and** F **consequently held that the ratio of the decision does not bind the respondents. In the connected appeals also the facts are similar.**

In these appeals to this Court it was contended on behalf of the appellants that (1) the scheme was bad in law because (a) there was no re-publication of the modified scheme under section 41(3) of the Act; (b) G **Sections 36 and 38 speak of personal notice to the owner or occupier but no notices were served on the co-owners; and (2) since notification under section 36 of the 1922 Act is equivalent to section 4(1) of the Land Acquisition Act, 1894; and as the scheme was not published within three years, notification under section 38 shall be deemed to have lapsed by** H

A operation of section 6 of the 1894 Act.

Dismissing the appeals, this Court

HELD : 1. The Punjab Town Improvement Act, 1922 does not contemplate any re-publication of modified scheme. The omission in that B behalf is discernible. The Act enjoins the trust to frame the scheme and its publication so as to invite objections within thirty days from the date of the publication. On receipt of the objection, if any, and after hearing the parties, the Trust is required to approve the scheme. When the objections were duly considered and the scheme was modified, there arises no need C for publication of the approved scheme. Therefore, the modified scheme is not required to be re-published under sections 36 and 38 of the Act.

[437-D-E]

2. Service of notice on one of the co-owners, when more than one have interest in the acquired land, would be sufficient service of notice on other D co-owners. Therefore, non-service of notice on the petitioners does not invalidate the scheme framed by the Trust. [439-F]

3. A conjoint reading of sections 38 and 79(2)(a) would clearly postulate that when the Act has not otherwise specifically provided, the notice served etc. on one is a notice to or on behalf of co-owners and is a E valid notice. Section 38 did not expressly state that notice shall be served on all owners if more than one co-owners has interest in the land under acquisition. Reliance on clause (a) of sub-section (1) of section 38 to contend that "every person" referred therein would include all co-owners and that, therefore, notice is required to be served on all the co-owners is F misconceived. What clause (a) of sub-section (1) of section 38 contemplates is only to find out who is believed to be owner or occupier of the land sought to be acquired by the trust. If this is noted, it would be clear that the aforesaid clause does not deal with service of notice, which has been dealt by section 79(2)(a). [439-C-E]

G 4. It would thus be clear that the legislature itself being aware of the existence of co-owners or occupier, authorised the trust to have the notice given, tendered or served on one owner or occupier and such service of notice is legal and valid notice. Even otherwise on principle of law also, it is common knowledge that every co-owner may not be in occupation of the H land or may not be cultivating the land or be in actual possession. He may

be residing elsewhere due to educational or pursuit of professional job etc., So, they may not be available for service. Legislature being cognizant to this situation has taken care to see that if more than one owner or occupier have interest in the land and the land belonging to co-owners or occupiers is sought to be acquired, service on one is taken as service on all the co-owners. [438-G-H, 439-A]

5. Section 40 clearly indicates that the period of three years would begin to run only from the date when the notification under section 36 was published and not from the date on which the scheme was prepared by the Trust. Though the scheme was prepared on June 21, 1976 since it was published on July 2, 1976 the limitation began to run only from July 2, 1976 and the Government has sanctioned it within three years from the date namely on June 28, 1979. Hence it was within time. [440-D]

Bhatinda Improvement Trust **v.** *Balwant Singh,* **A.I.R. (1992) SC 2214, held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 201-206 of 1991.

From the Judgments and Orders dated 31st July, 1989, 3rd January, 1989 and 1st June, 1989 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition Nos. 5873 of 1985, 5772 of 1981, 3124 of 1987, 5772 of 1981, 3285 of 1986 and 411 of 1986 respectively.

O.P. Sharma, K.R. Gupta, Vivek Sharma, Mr. Namila Sharma, Ashok Sudan, R.C. Gubrele, Ashok Mathur, Sanjay Sareen, Mr. Neelam Sharma, Uma Datta, T.C. Sharma, Ms. S. Sarani, Sanjay Bansal and G.K. Bansal for the appearing parties.

The following Order of the Court was delivered :

These appeals are disposed of by a common judgment since a common question of law has arisen in these appeals. The material facts in C.A. Nos. 202-03/91 need be noted for disposal of these appeals, which are as under :

The Improvement Trust, Ludhiana had framed a scheme called 'Development-cum-Housing Accommodation Scheme' on the right side of Pakhowal road beyond Sidhwan Canal at Ludhiana which was approved by

A Resolution No. 28 dated March 24, 1976. After following the procedure prescribed under the Punjab Town Improvement Act, 1922 (for short 'the Act') the approval of the State Government under s.41 of the Act was sought for the granted by the State on June 28, 1979. The appellants and some others questioned the correctness of the aforesaid scheme in *Sunder Singh and Ors.* v. *State of Punjab,* (W.P. No. 3056/82). By judgment dated B Feb. 9, 1984 the Division Bench of the High Court of Punjab and Haryana, on concession made by the counsel appearing for the State, quashed the scheme *qua* the petitioners therein. The appellants had also sought to quash the scheme on the grounds that the scheme sanctioned by the Government was different from the scheme framed by the Trust; the C notices as required under ss. 36 and 38 have not been served; there was inordinate delay in finalisation of the scheme and that, therefore, the entire scheme required to be quashed. All the contentions were negatived by the High Court. On the effect of the decision of *Sunder Singh's* case, the Division Bench pointed out that since the decision was on the concession made by the State counsel that the scheme was not approved within three D years from the date of the publication of the Notification under s.36, which legally and factually was not correct, the ratio therein does not bind the respondents. Thus the Writ Petition No. 3124/81 came to be dismissed by the High Court in the impugned order dated March 1, 1979. Similar are the facts in other appeals.

E Shri O.P. Sharma, learned senior counsel appearing for the appellants, while reiterating the first two contentions raised in the High Court, strenuously contended that notice served on one of the co-owners was not a service of notice on all the owners. Admittedly notices on other three owners were not served. Their brother was not on speaking terms with the F appellants. Sections 36 and 38 speak of personal notice to the owner or occupier. The omission to serve on all the co-owners renders the entire scheme void and inoperative. These contentions have been resisted by the learned counsel for the respondents.

The first question, therefore, is whether there is any ambiguity in the G identity of the scheme framed by the Trust and the scheme sanctioned by the State Government. The High Court had sent for the record and after perusal of the record, it pointed out that the scheme was in relation to "Development-cum-Housing Accommodation Scheme on the right side of the Pakhowal road beyond Sidhwan Canal at Ludhiana". That scheme, after H following the procedure, was passed by the Board in Resolution No. 66

dated May 7, 1979 and was sent for sanction of the Government. The approved scheme was published on July 2, 1976 and the Government had sanctioned it as required under s.41 on July 1, 1979. The High Court thus came to the conclusion that there was no ambiguity or discrepancy as to the identity of the scheme.

In this behalf the contention raised by Shri O.P. Sharma is that the High Court had noted that the trust had modified the scheme and the approval by the State Government was in respect of that modified scheme and that, therefore, by operation of sub-s. (3) s.41 of the Act, there is no re-publication of the scheme under s.36. Therefore, the scheme is bad in law. We find no force in the contention. It is to be seen that the trust itself, after hearing objections, had passed the resolution modifying the scheme initially framed on March 24, 1979 and sent it for sanction of the State Government. The service of notices required under ss.36 and 38 are in relation to the scheme initially framed by the trust. The Act does not contemplate of any re-publication of modified scheme. The omission in that behalf is discernible. The Act enjoins the trust to frame the scheme and its publication so as to invite objections within thirty days from the date of the publication. On receipt of the objection, if any, and after hearing the parties, the trust is required to approve the scheme. Therefore, when the objections were duly considered and the scheme was modified, there arises no need for publication of the approved scheme. Sub-s.(1) of s.40 itself provides that "the trust may either abandon the scheme or apply to the State Government for sanction of the scheme with such modifications" as the trust may deem necessary. Therefore, the modified scheme is not required to be re-published under ss.36 and 38 of the Act. .

It is next contended that there is no notice served on any of the persons and that, therefore, the mandatory requirement of ss.36 and 38 have not been complied with. We find no force in the contention. The High Court in this behalf also had sent for the record and after perusing the record i.e. summons issued by the trust, it found, as a fact, that the notices were served on all the persons except the petitioners Nos. 1, 4 and 6. Notice was also served on Sukhdev Singh, petitioner No. 5 therein, their brother. All of them are appellants before us. The High Court, therefore, noted that notice had been duly served on all the persons. The Gazette Notifications have been placed before us which would clearly show that the notices required under s.36 were published in the State Gazette on July 2, 1976,

July 9, 1976 and July 16, 1976, in three consecutive weeks and the same notices were published in Tribune, local newspaper on July 3, 1976, July 10, 1976 and July 17, 1976, respectively. Therefore, as enjoined under sub-s.(3) and s.36 notices have been duly served. As seen, notices under s.38 have been served on all of them except three persons, namely, petitioner Nos. 1, 4 and 6, and also on the brother of Bikram Singh, petitioner No. 10, namely, Kartar Singh his co-owner. Thus as a fact notices have been served under s.38 on all the persons except the aforesaid four persons.

The question thus arises whether notices on one co-owner is notice on other co-owners. Indisputably the petitioner Nos. 1, 4, 5 and 6 being brothers, are co-owners. Similarly, Vikram Singh and Kartar Singh are brothers and are co-owners. It is stated across the bar by Shri Sharma that the brothers are not on speaking terms. The fact that all of them have jointly filed the appeal in this Court and engaged the same counsel, would clearly indicate that they are sailing together and the professed hostile terms is a pretence.

It is true that s.38(1) provides that every person whom the trust has reason to believe, after due enquiry, to be the owner of any immovable property which it is proposed to acquire in executing the scheme or the occupier, shall be served with the notice thereof. Section 79(2) of the Act in this behalf lends some clue on the due service of notice on co-owner. It states that every notice other than a public notice and every bill issued under this Act shall, unless it is otherwise expressly provided under this Act, be served or presented when a notice is required or permitted under this Act to be served upon an owner or occupier, as the case may be, of a building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof in such cases not otherwise specifically provided for in this Act shall be effected either by giving or tendering the notice, or sending it by post, to the owner or occupier, or if there be "more owners or occupiers than one, to any one of them". It would thus be clear that the legislature itself being aware of the existence of co-owners or occupier, authorised the trust to have the notice given, tendered or served on one owner or occupier and such service of notice is legal and valid notice. Even otherwise on principle of law also, it is common knowledge that every co-owner may not be in occupation of the land or may not be cultivating the land or be in actual possession. He may be residing else-

where due to educational or pursuit of professional job etc. So, they may not be available for service. Legislature being cognizant to this situation, has taken care to see that if more than one owner or occupier have interest in the land and the land belonging to co-owners or occupiers is sought to be acquired, service on one, is taken as service on all the co-owners.

Sri Sharma contends that if the Act would not have provided for any procedure for such service, then only the benefit of s.79(2)(a) gets attracted; and since s.38 has otherwise provided, the procedure for service of notice, benefit under s.79(2)(a) is not available. We find no force in the contention. A conjoint reading of these clauses would clearly postulate that when the Act has not otherwise specifically provided, the notice served etc. on one is a notice to or on behalf of co-owners and is a valid notice. Section 38 did not expressly state that notice shall be served on all owners if more than one co-owners has interest in the land under acquisition. Reliance on clause (a) of sub-s.(1) of s.38 to contend that "every person" referred therein would include all co-owners and that, therefore, notice is required to be served on all the co-owners is misconceived. It is to be remembered that clause (a) of sub-s.(1) of s.38 gives power to the trust to effectuate service of notice on the person, whom the trust has reason to believe, after due enquiry, to be the owner or occupier of the immovable property sought to be acquired for implementing the scheme. The formation of belief of ownership or occupation is distinct and separate from the service of notice on those found to have joint ownership. What clause (a) of sub- s.(1) of s.38 contemplates is only to find out who is believed to be owner or occupier of the land sought to be acquired by the trust. If this is noted, it would be clear that the aforesaid clause does not deal with service of notice, which has been dealt by s.79(2)(a).

Thus we hold that service of notice on one of the co-owners, when more than one have interest in the acquired land, would be sufficient service of notice on other co-owners. Therefore, non- service of notice on the petitioner Nos. 1, 4 and 6 and Bikram Singh does not invalidate the scheme framed by the trust. So it is a valid scheme.

It is true that the scheme was quashed by the High Court *qua* the petitioners therein. When counsel for the respondent stated that the special leave petition has been filed against the judgment, we have got verified and we are informed by the Registry that the matter is pending decision. So we

A do not propose to express any opinion on the correctness of the above judgment. Suffice it to say that the ratio therein was confined to those petitioners. Since the entire scheme was not quashed, we do not find any necessity to declare the entire scheme to be invalid.

It is next contended that since notification under s.36 is equivalent B to s.4(1) of the Land Acquisition Act 1894 (for short, 'the Central Act') and as the scheme was not published within three years, notification under s.38 shall be deemed to have lapsed by operation of s.6 of the Central Act. We find no force in the contention. We find that the High Court is right in its conclusion that the notification under s.36 was published on July 2, C 1976 and the sanction of the notification was made under s.40(1) on June 28, 1979. Section 40 clearly indicates that the period of three years would begin to run only from the date when the notification under s.36 was published and not from the date on which the scheme was prepared by the trust. Though the scheme was prepared in June 21, 1976 since it was published on July 2, 1976, the limitation began to run only from July 2, D 1976, and the Government had sanctioned it within three years from the date, namely on June 28, 1979. The ratio in *Bhatinda Improvement Trust* v. *Balwant Singh,* AIR (1992) SC 2214, on facts has no application. Therefore we need not go into the question of the applicability of the Central Act and the limitation in that behalf.

E It is finally contended that in the year 1991 the State itself had withdrawn part of the scheme and that, therefore, the appellants are equally entitled to the same benefit. We have seen that scheme which does not relate to the scheme in question. Under these circumstances, we cannot set aside the scheme as in hand.

F The appeals (C.A. Nos. 201-206/91) are accordingly dismissed but in the circumstances without costs.

C.A. No. 5032 of 1995 S.L.P. (C) No. 6734/94

G Leave granted.

The appeal is dismissed. No costs.

T.N.A. Appeals dismissed.