

Held that the reply did not amount to waiver by the pre-emptor of his right of pre-emption, as the pre-emptor's answer did not affect any present right vested in him.

Held also that as the pre-emptor's reply was non-committal in relation to pre-emptor's rights, the vendee could not be supposed to have acted on the faith of any assurance derived from it. The pre-emptor was, therefore, not estopped from suing to enforce his right."

(16) These two authorities support the view that I have taken above. I, therefore, agree with the learned Additional District Judge that even if it be accepted that the plaintiff and his brother had purchased property elsewhere a few days after the sale and got the money of that sale from their mother for that purpose, it could not be held in law that the plaintiff had waived his right of pre-empting the first sale.

(17) The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court.

N.K.S.

FULL BENCH

MISCELLANEOUS CIVIL.

Before Harbans Singh, C.J., B. R. Tuli and P. C. Jain, JJ.

HARBANS KAUR ETC.,—*Petitioners*

versus

LUDHIANA IMPROVEMENT TRUST ETC.,—*Respondents.*

C. W. No. 3229 of 1969.

February 5, 1973.

Punjab Town Improvement Act (IV of 1922)—Sections 36, 42 and 59—Land Acquisition Act (I of 1894 as amended by Land Acquisition (Amendment and Validation) Ordinance 1967 later on enacted into Act XXIII of 1967)—Sections 4 and 6—Notice under section 36 and notification under section 42 Town Improvement Act—Whether equated with notification under section 4 and declaration under section 6, Land Acquisition Act—Section 6 as amended by the Ordinance and the Act—Whether applicable to notification under section 42,

Town Improvement Act—Constitution of India (1950)—Article 14—Denial of the benefits of Land Acquisition Act to persons whose lands are acquired under Town Improvement Act—Whether amounts to violation of Article 14.

Held, that notice under section 36 and notification under section 42 of the Punjab Town Improvement Act, 1922, are to be equated with notification under section 4 and declaration under section 6 of the Land Acquisition Act, 1894. Section 59 and the Schedule to the Town Improvement Act make it abundantly clear that the procedure to be followed for the acquisition under the Act is the one laid down in Land Acquisition Act which is in force at the time of the acquisition and not at the time when the Punjab Town Improvement Act was brought into force. Hence section 6 of the Land Acquisition Act as amended by the Land Acquisition (Amendment and Validation) Ordinance 1967, which was enacted into Act XXIII of 1967, squarely applies to a notice under section 36 and subsequent notification under section 42 of the Punjab Town Improvement Act.

Held, that the benefits under the Land Acquisition Act have to be allowed to the persons whose lands or properties are acquired under the Punjab Town Improvement Act. Different measures of compensation cannot be laid down for acquisitions made for different public purposes. Hence the denial of the benefits of the Land Acquisition Act to the persons whose lands are acquired under the Punjab Town Improvement Act will amount to violation of Article 14 of the Constitution of India, 1950. (Para 6).

Case referred by the Hon'ble Mr. Justice C. G. Suri on 15th September, 1970 to the Division Bench as C. W. No. 331 of 1970 and three others involving the identical questions of law have been admitted to the Division Bench. The Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice Gopal Singh further referred the case to a Larger Bench for decision. The Larger Bench consisting of Hon'ble the Chief Justice Mr. Harbans Singh, Hon'ble Mr. Justice Bal Raj Tuli and Hon'ble Mr. Justice Prem Chand Jain after disposing of the points referred to on 5th February, 1973, returned the case to the Learned Single Bench for final disposal of the case of merits.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the impugned notification No. 6391-6-LCII-69/9737, dated 21st August, 1969 (Copy annexure 'D') and restraining the respondents from acquiring the land in question.

GURBACHAN SINGH, ADVOCATE, for the petitioners.

RAJ KUMAR AGGARWAL, ADVOCATE FOR NO. 1.

J. S. WASU, ADVOCATE-GENERAL, PUNJAB FOR NOS. 2 TO 4 WITH INDERJIT MALHOTRA, ADVOCATES.

JUDGMENT.

The Judgment of this Court was delivered by :—

B. R. TULI, J.—(1) These ten writ petitions (C.W. Nos. 3229 of 1969, 2, 3, 552, 553, 669, 1475, 1476, 1477 and 1478 of 1970), came up for hearing before a Division Bench, along with two other writ petitions (C.W. Nos. 331 and 347 of 1970), which have since been dismissed as withdrawn, and by order dated March 25, 1971, were referred to a Full Bench for decision on two common questions of law involved in these petitions with the observations that after those matters are settled by a larger Bench, the cases will go back to a learned Single Judge for decision on other subsidiary points.

(2) The facts of C.W. 3229 of 1969, may be noticed in order to appreciate and decide the points of law which have been referred to this Bench for decision.

(3) The Ludhiana Improvement Trust passed a resolution dated March 4, 1961, as under :—

“Resolved unanimously that an expansion scheme under section 24 read with section 28(2) of the Punjab Town Improvement Act, 1922, be and is hereby framed for the area measuring approximately 400 acres bounded as under :

North.—Municipal Boundary.

East.—Ludhiana-Dhuri Railway Line.

South.—Sidhwan Canal.

West.—Ludhiana-Ferozepur Railway Line.

Resolved also that except the existing buildings not likely to interfere with the lay-out, all other property may be acquired.

Resolved further that a Chairman is authorised to take further necessary action under sections 26 and 38 and other provisions of law.”

In pursuance of that resolution, a notice under section 36 of the Punjab Town Improvement Act, 1922 (hereinafter called the Act) was issued on March 6, 1961, a copy of which is annexure 'B' to the writ petition. Thereafter, the Punjab Government issued Notification No. 6391-6LCII-69/3827, dated February 11, 1969, in pursuance of the provisions of section 42(1) of the Act, a copy of which is annexure 'C' to the writ petition. That notification was superseded by Notification No. 6391-6LCII-69/9737, dated August 21, 1969, a copy of which is annexure 'D' to the writ petition.

(4) From the above facts, it is clear that although the notice under section 36 was issued on March 6, 1961, the first notification under section 42 was issued on February 11, 1969, that is, after the expiry of nearly eight years. The acquisition of properties under the Act has to be in accordance with the procedure prescribed in the Land Acquisition Act, I of 1894, as is clear from section 59 of the Act and the Schedule thereto. In the Schedule to the Act, modifications to the various sections of the Land Acquisition Act have been made for the purposes of the Act. In the wake of a judgment of their Lordships of the Supreme Court in *The State of Madhya Pradesh and others v. Vishnu Prasad Sharma and others* (1), the Union Government issued the Land Acquisition (Amendment and Validation) Ordinance, 1967, which was later enacted into the Land Acquisition (Amendment and Validation) Act, 13 of 1967, which, *inter alia*, amended section 6 of the Land Acquisition Act, so as to read as under:—

"6(1) Subject to the provisions of Part VII of this Act when the appropriate Government is satisfied, after considering the report, if any, made under section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the said notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have

(1) A.I.R. 1966 S.C. 1598.

been made whether required under section 5-A, sub-section (2) :

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from date of such publication :

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

- (2) Every declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.
- (3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing."

The said Ordinance came into force with effect from January 20, 1967, while the Land Acquisition (Amendment and Validation) Act came into force with effect from April 12, 1967. It is clear from the proviso to section 6(1) that the notification under section 6 has to be made within three years of the notification under section 4, as far as the notification issued after the commencement of the Ordinance are concerned. With regard to the earlier notifications under section 4, the appropriate Government was allowed two years time for issuing notification under section 6. That two years' time expired on January 20, 1969. It has been held by their Lordships of the Supreme Court in *Nagpur Improvement Trust and another v. Vithal Rao and others* (2), that notice under section 39 and notification under section 45 of the Nagpur Improvement Trust Act are to be equated with the

(2) C.A. No. 2139 of 1968 decided by Supreme Court on 11th December, 1972.

notifications under sections 4 and 6 of the Land Acquisition Act. Sections 39 and 45 of the Nagpur Improvement Trust Act correspond to section 36 and 42 of the Act. From the ratio of that decision, it is apparent that the notice issued on March 6, 1961, by the Ludhiana Improvement Trust is to be deemed as notification under section 4 of the Land Acquisition Act and the notification under section 42 of the Act has to be considered as one issued under section 42 of Land Acquisition Act. The notification under section 42 of the Act had, therefore, to be made within two years of the coming into force of the above-mentioned Ordinance as the notification under section 36 had been issued on March 6, 1961, that is, before the date of the promulgation of that Ordinance. The notification was in actual fact issued on February 11, 1969, and was then superseded by a notification dated August 21, 1969, which is, therefore, not in accordance with the law.

(5) We find no merit in the submission made on behalf of the respondents that only those provisions of the Land Acquisition Act are applicable to the acquisition made under the Act which were in force on the date the Act came into force in 1922. Section 59 and the Schedule to the Act make it abundantly clear that the procedure to be followed for the acquisition is the one laid down in the Land Acquisition Act, which means the Land Acquisition Act which is in force at the time of the acquisition and not at the time when the Act was brought into force. It is a matter of common knowledge that the Acts undergo changes by amendment or repeal and re-enactment and, therefore, the provisions of the particular Act at the relevant time have to be seen. We are, accordingly, of the opinion that section 6 of the Land Acquisition Act, as amended by the Amendment and Validation Ordinance and the Act, referred to above, squarely applies to the notice under section 36 and the subsequent notification under section 42 of the Act in these cases. Moreover, it is a benefit which has been conferred by the Parliament on the owners of properties to be acquired and the petitioners cannot be deprived of that benefits as per our decision of the second question which is now going to be considered.

(6) The second question for decision is whether the denial of the benefits of the Land Acquisition Act to the person whose lands are acquired under the Act will amount to violation of Article 14 of the Constitution because in both cases land is acquired by the

State for a public purpose and the person whose land is acquired under the Land Acquisition Act is treated more beneficially than the one whose land is acquired under the Act. This question has been completely answered by their Lordships of the Supreme Court in the judgment referred to above and it has been held that the benefits under the Land Acquisition Act have to be allowed to the persons whose lands or properties are acquired under the Act and different measures of compensation cannot be laid down for acquisitions made for different public purposes. Respectfully following the above judgment, we answer the question formulated above in the affirmative, that is, the denial of the benefits of the Land Acquisition Act to the persons whose lands are acquired under the Act will amount to violation of Article 14 of the Constitution and, therefore, all benefits under the Land Acquisition Act shall be allowed to the persons whose lands and properties are acquired under the Act.

(7) The learned counsel for the Improvement Trust raised an objection that the petitions were not competent on the ground of delay and laches and that numerous other landowners have received the compensation and have not challenged the acquisition of their properties in pursuance of the notices issued in March, 1961 and notifications issued on February 11, 1969, and August 21, 1969, and the same cannot be declared as null and void *qua* them. These are the matters which will be open to the learned counsel to raise before the learned Single Judge who will hear these writ petitions. These are not the matters for decision by this Bench which was constituted in order to decide two important questions of law which arose in these petitions. The cases will now be placed before a learned Single Judge for decision in the light of the observations made above.

K.S.K.

