

Kishan Chand v. The Jullundur Improvement Trust, etc. (Sarkaria, J.)

such a Tribunal is not a Court as defined in Section 3 of Evidence Act, but partakes the character of an Arbitrator, with most of the trappings of a Court.

(34) It will, therefore, be opposed to fundamental canons of justice and public policy to treat the judgments of the criminal Court binding on a Motor Accidents Claims Tribunal, trying a claim arising out of a motor accident involving injury or death. The judgment of the criminal Court, can at the most, be used only for the purpose and to the extent indicated in Section 43 of the Evidence Act.

(35) For the reasons recorded in our separate judgments, we answer, the question referred to us in the following manner, and direct that this appeal will now go back to the learned Single Judge for disposal on merits in accordance with law:—

“The judgment of a Criminal Court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under Section 110—C of the Motor Vehicles Act, and its findings as to the guilt or otherwise of driver are wholly irrelevant for the purpose of the trial on merits of the claims petition before the Motor Accidents Claims Tribunal. Such judgment can, however, be relevant only for the purpose and and to the extent specified in section 43 of the Evidence Act.”

Costs of this reference shall be costs in the appeal.

K.S.K.

CIVIL MISCELLANEOUS

Before Ranjit Singh Sarkaria, J.

KISHAN CHAND,—Petitioner

versus

THE JULLUNDUR IMPROVEMENT TRUST AND OTHERS,—Respondent

Civil Writ No. 1533 of 1963

December 16, 1968

Punjab Development of Damaged Areas Act (X of 1951)—S. 12(2)—Provisions of—Whether mandatory—Non-observance thereof—Whether makes the scheme inexecutable.

Held, that from scheme and context of the Punjab Development of Damaged Areas Act, it is clear that the provisions of section 12(2) are mandatory. This is also indicated by the word 'shall' occurring in that sub-section. The Trust is peremptorily required by this sub-section to submit for the scrutiny of the State Government an accurate statement containing, *inter alia*, the actual cost of the Scheme and the estimated value of the plots, within a period of not more than 3 years from the date of the sanction of the Scheme. The non-observance of the mandatory provisions of section 12(2) of the Act makes the scheme inexecutable. The Trust has to make up its mind for taking over possession of the land comprised in a Scheme within 3 years from the date of the sanction of the Scheme, and, after the expiry of that period it can neither take possession nor proceed with the execution of the Scheme. (Para 16)

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the Scheme framed by the respondent No. 1 under the Punjab Development of Damaged Areas Act, 1951, involving the shop (Evacuee property No. E.E. 139 in the City of Jullundur) in possession of the petitioner and all proceedings of acquisition of the said property and relating to possession, etc., and further praying that the entire proceedings under the said Scheme be declared ultra vires and without jurisdiction, having no authority of law.

RAJINDER SACHAR, ADVOCATE, for the Petitioner.

K. L. SACHDEVA, ADVOCATE, for the Respondent No. 1.

ACHHAR SINGH, ADVOCATE FOR ADVOCATE-GENERAL (Punjab), for Respondents 2 and 3.

JUDGMENT

SARKARIA, J.—This is a petition under Articles 226 and 227 of the Constitution for the issuance of an appropriate writ, order, or direction, quashing the Scheme purporting to have been framed under Section 6(2) of the Punjab Development of Damaged Areas Act, 1951 (hereinafter called the 'Punjab Act') for acquiring shop No. EE. 139 of the petitioner, situated on New Railway Road, Jullundur City.

(2) The petitioner is a displaced person from West Pakistan. He was allotted evacuee property No. EE-139 in Jullundur City by the Rehabilitation Authorities under the Administration of Evacuee Property Act. Thereafter, the petitioner started a shop on the allotted premises under the style of 'Sat Kartar Vaishnu Hotel'. This shop having been vested in the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the 'Central Act') was offered for transfer by that Government to the petitioner per their letter, dated 25th July,

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1959. The petitioner accepted that offer and has been paying regular instalments towards its price to the Central Government. As all the instalments had not yet been paid, the regular transfer deed has not been executed in his favour. Otherwise, the petitioner is entitled to and is exercising all the rights of ownership in the said shop.

(3) The petitioner received a notice (Annexure A. 1) under Section 6(2) of the Punjab Act from the Land Acquisition Collector (Respondent No. 2) requiring him to hand over the possession of the shop to the Jullundur Improvement Trust (Respondent 1) by the 20th February, 1963. This notice was issued on the assumption that the Scheme for the area comprising the shop in dispute had been validly made under the Punjab Act. This assumption, however, is not supported by any law, as no notification declaring the area of the shop to be damaged area was validly issued. There was thus total lack of jurisdiction on the part of the Improvement Trust or the Government to grant a Scheme for the area.

(4) For reasons best known to him, Respondent No. 2 did not pursue the matter after issuing the aforesaid notice (Annexure A. 1). Thereafter, the process-server of Respondent 2 came to the petitioner nearabout the 14th or 15th August, 1963, with a notice that the possession of the said shop will be taken from the petitioner at 9 a.m. on the 22nd of August, 1963.

(5) The petitioner challenges all these proceedings for acquisition of the area under his shop as being *ultra vires* and illegal, on the following grounds :—

- (1) The area under the shop has not been declared to be a damaged area within the meaning of the Punjab Act.
- (2) The Scheme was sanctioned under Section 5(3) of the Punjab Act sometime in 1957. Thereafter, the Trust has not yet submitted any statement containing the actual cost of the Scheme and the estimated value of other sources of income, etc., for the Scheme which remain outstanding, within the prescribed period of 3 years from the sanction of the Scheme as is required by the mandatory provisions of Section 12(2) of the Punjab Act. In the absence of such a statement, the Collector cannot work out compensation payable to the petitioner. The result is that the Scheme has lapsed and become inexecutable.

- (3) Until the actual transfer deed is executed, the property in dispute continues to vest in the Central Government and Respondent 2 has no jurisdiction to acquire it.

In the written statement, Respondent 1 (Jullundur Improvement Trust) admitted that the area under the shop was being acquired under a Scheme framed under the Punjab Act. It, however, stated that this area was declared as damaged area by the Punjab Government per notification No. 375-C-53/10116, dated 20th February, 1953. It is further stated that the period of three years prescribed by Section 12(2) of the Punjab Act for submitting a statement of the costs, etc. commences to run only from the date of taking over possession, because the execution of the Scheme, to which Section 12 relates, can commence only by the taking over possession of the land comprised in the Scheme. It is only after taking over possession that the question of submitting a statement to the Government, including the actual cost, estimated value of the land, etc., arises. The Scheme was framed on 30th November, 1953. Government sanctioned the Scheme on January 14, 1958. In the meantime, the Central Act was passed and the entire evacuee property, including the one in dispute, came to be vested in the President of India and could not be taken into possession by the Trust under Section 12(1) of the Punjab Act. In the circumstances, the Trust could not proceed to execute the Scheme, and, as such, was not in a position to submit the required statement to the State Government within three years of the sanction of the Scheme. Negotiations with the Rehabilitation Authorities of the Government of India finalised in the year 1962 and the Government of India agreed to transfer 3592 *kanals* and 19 *marlas* of land to the Improvement Trust through the State Government under the Package Deal. The land comprised in the Scheme in question is included in this Package Deal. Thereafter, there has been no lapse on the part of the answering respondent. Now possession has got to be taken to go ahead with the Scheme.

(6) Respondent 3 (State of Punjab) in their separate written statement, stated that a notification declaring the area in dispute as a 'damaged area' was issued under the Punjab Act on February 20, 1953. It has, however, admitted that Respondent 1 has not submitted an accurate statement of income and costs, etc., as is required under Section 12(2) of the Punjab Act within the time limit prescribed therein.

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(7) Thus, it is common ground that the statement required under Section 12(2) of the Punjab Act was not submitted by the Trust within the time limit prescribed by Section 12(2) of the Punjab Act. The only question that falls to be determined is, what is the effect of not complying with that provision. The question will further resolve itself into the issue, whether the provisions of Section 12(2) are mandatory or merely directory.

(8) The relevant provisions of the Punjab Act may be noticed. Clause (c) of Section 2 says that "Cost of a Scheme" includes all expenses incurred by an Improvement Trust in the preparation, supervision and execution of the Scheme. Clause (d) of the same section defines 'Damaged Area' as any area which the State Government may, by notification, declare to be a damaged area.

(9) Section 3 enables the Trust to frame a Scheme for all or any of the matters mentioned in Section 28 of the Punjab Town Improvement Act, 1922.

(10) Section 4 requires the Schemes to be published by the Trust.

(11) Section 5 provides for decision of objections and publication of the Scheme sanctioned by the State Government. Sub-section (4) of the same section says that the publication under sub-section (3) shall be conclusive evidence that a scheme has been duly framed and sanctioned.

Section 6 is material. It reads:—

"Acquisition of damaged area through the Collector.—

(1) The Trust *shall*, within *three* months from the date of publication of the scheme under sub-section (3) of section 5, apply to the Collector for the acquisition of any damaged area comprised in the scheme and, if considered necessary for the immediate delivery of the possession of the whole or any part of such area to the Trust.

"(2) Notwithstanding anything contained in any other law for the time being in force, the Collector may accept the application made to him under the foregoing sub-section

and forthwith deliver, or cause to be delivered, to the Trust possession of the damaged area for which the application has been made, and on such order being made the area shall thenceforth vest absolutely in the Trust free from all encumbrances but subject to the payment in due course of compensation by the Trust in accordance with the provisions of this Act.

Provided that possession of any building or part of a building shall not be taken unless its occupier has been given at least two weeks' notice, or such longer notice as is considered reasonably sufficient to enable him to remove his moveable property from such building without unnecessary inconvenience to himself."

(12) Section 8 says that after the possession of the land has been delivered to the Trust, the Collector shall have the land (unless this has already been done) demarcated and measured and, if no plan of the site exists, have a plan prepared.

(13) Section 9 requires the Collector to cause notices to be posted inviting the claims to compensation and objections.

(14) Section 11 says how such claims and objections will be enquired into and compensation determined by the Collector.

Section 12 reads as follows :—

"Execution of scheme by the Trust.—

- (1) On possession of the land comprised in any sanctioned scheme being delivered to the Trust, it shall proceed to execute the scheme.
- (2) The Trust shall, as soon as after—but not later than three years from the date of the sanction of the scheme,—submit for the scrutiny of the State Government an accurate statement which shall contain the following particulars:—
 - (a) the actual costs of the scheme ;
 - (b) the income derived from the scheme ;
 - (c) the particulars and the estimated value of the plots and any material thereon that remain to be sold ; and

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(d) the estimated value of the other sources of income from the scheme which remain outstanding.

(3) The State Government shall, after such scrutiny as it may deem necessary, notify the details of the aforesaid statement."

(15) Section 13 is also material. It says that after the statement has been notified under Section 12, the Collector shall make an award apportioning compensation, in the manner prescribed, among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether or not they have appeared before him. Sub-section (2) of Section 13 says:—

"Notwithstanding anything contained in any other law for the time being in force, the total compensation payable for any land acquired under this Act shall be the difference between—

(a) the income of the scheme, which shall include the estimated value of the plots and the material thereon that remain to be sold and the other sources of income from the scheme which remain outstanding ;
and

(b) the cost of the scheme, as notified in the statement under section 12."

(16) From the scheme and context, it is clear that the provisions of section 12(2) are mandatory. This is also indicated by the word 'shall' occurring in that sub-section. The trust is peremptorily required by this sub-section to submit for the scrutiny of the State Government an accurate statement containing, *inter alia*, the actual cost of the Scheme and the estimated value of the plots, within a period of not more than 3 years from the date of the sanction of the Scheme. The language of sub-section (2) is clear enough. The words 'the date of the sanction of the scheme' cannot by any stretch of reasoning, be constructed to mean as the date of the taking over of possession of the land comprised in any sanctioned scheme by the Trust'. The reason for fixing this time-limit seems to be that the intention of the legislature was that there should be no

undue delay in payment of compensation to the person whose land is acquired under the Scheme. Without submission of such a statement by the Trust, the Collector cannot, under Section 13, assess the compensation. If the words 'the date of the sanction of the scheme' are to be divorced from their literal meaning, and are construed to mean 'the date on which the Trust may choose to take possession of the land comprised in the scheme', the very object of fixing this time-limit would be frustrated, because the Trust by postponing the taking over possession for years on end, may prolong the threat of impending acquisition with consequential hardship to the owner of the land, which the legislature wanted to avoid. Moreover, it will be foreign to all accepted principles of interpretation to ignore the plain and clear language of the statute and run after the vague and shadowy thing,—the spirit of the statute. I, therefore, have no hesitation in holding that non-observance of the mandatory provisions of Section 12(2) of the Punjab Act has made the Scheme inexecutable, and these proceedings for taking over of possession, void. Reading sub-section (1) and (2) of Section 12 of the Punjab Act, it is clear that the Trust has to make up its mind for taking over possession of the land comprised in a Scheme within 3 years from the date of the sanction of the Scheme, and, after the expiry of that period it can neither take possession nor proceed with the execution of the Scheme.

(17) No other point has been argued before me in this petition.

(18) For the foregoing reasons, I have no hesitation in holding that the proceedings for execution of the Scheme being violative of the mandatory provisions of Section 12(2) of the Punjab Act, are void and without jurisdiction and must be struck down. In the result, the petition succeeds and is allowed with costs. Further proceedings, which are being taken under the garb of that inexecutable scheme, are quashed.

K.S.K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

NASIB SINGH,—*Petitioner*

versus

J. S. PURI AND OTHERS,—*Respondents*

Civil Writ No. 2308 of 1964

December 16, 1968

Gram Panchayat Election Rules (1960)— 7—Provision of—Whether mandatory—Nomination papers for election of the Chairman of a Gram Sabha not