Supreme Court of India
Smt.Winky Dilawari & Anr vs Amritsar Improvement ... on 3 September, 1996
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
SMT.WINKY DILAWARI & ANR.

Vs.

RESPONDENT:
AMRITSAR IMPROVEMENT TRUST,AMRITSAR

DATE OF JUDGMENT: 03/09/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
FAIZAN UDDIN (J)

ACT:

HEADNOTE:

JUDGMENT:

THE 3RD DAY OF SEPTEMBER, 1996 Present:

Hon'ble Mr.Justice K.Ramaswamy Hon'ble Mr.Justice Faizan Uddin D.V.Sehgal, Sr.Adv.A.T.M.Sampath, Ms.Monica Gosain, Advs., with him for the appellants.

E.C.Agrawala, Adv. for the Respondent O R D E R The following order of the Court was delivered: Smt.Winky Dilawari & Anr.

V.

Amritsar Improvement Trust, Amritsar O R D E R This appeal by special leave arises from the judgement and order of the learned single Judge of the Punjab & Haryana High Court made in RSA No. 2071/92 on August 2, 1993. The admitted facts are that the respondent-Trust had framed a Scheme for providing passage to Guru Nanak Stadium from the main road, namely, Madan Mohan Malviya Road under Section 36 of the Punjab Town Improvement Act, 1922 (for short, the "Act"]. The Scheme in that behalf was framed and notices were issued of the factum of framing of the

Scheme; objections were invited and the Scheme was published under Section 78 in the weekly newspapers for three consecutive weeks and also in the State Official Gazette. It was also published in the newspapers in the locality within the specified period. The notice of the Scheme was sent to the President of the Municipal Committee and to the Medical Officer under sub-section 2(b) of Section 36 of the Act. No objections in that behalf came to be made. Thereafter, the Government had approved the Scheme under Section 40 of the Act. By operation of Section 42(2) of the Act, the approval of the Scheme having been published under Section 42(1), it became conclusive evidence that the Scheme had been duly framed and sanctioned. Thereafter, the proceedings under Schedule to the Act read with Section 59 were taken up for acquisition of the land proposed to be acquired under the Scheme. Section 38 of the Act envisages compliance of the notice of the publication in that behalf. It reads as under:

> "38. Notice of proposed acquisition of land :- (1) During the thirty days next following the first day on which any notice is published under section 36 in respect of any Scheme under this Act the trust shall serve a notice on:-
>
> (i) 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.
>
> (ii) The occupier (who need not be named) of such premises as the trust proposes to acquire in executing the Scheme.
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> 2) Such notice shall :-
>
> a) state that the trust proposes to acquire such property for the purposes of carrying out a Scheme under this Act, and
>
> b) require such person, if he objects to such acquisition, to state his reasons in writing within a period of sixty days from the service of the notice.
>
> 3) Every such notice shall be signed by, or by the order of the Chairman."

There is no dispute and it cannot be disputed that service of the notice on every person whom the Trust had reason to believe, after due enquiry, to be the owner of the immovable property which the Trust proposes to acquire in execution of the Scheme, or the occupier of such premises, is necessary. It would therefore, be necessary that the Trust must have reason to believe, after due enquiry, that the person to be affected is the owner of the immovable property proposed to be acquired. In this case, the admitted position is that the disputed property is a vacant site. The appellant had purchased the property on January 24, 1985. The Scheme was approved by the Government on March 19, 1985. It would be obvious that the proposal under Section 36 was widely published in the Gazette, weekly and daily newspapers and notice thereof was also given to the Municipality before the appellants purchased the property. It is not in dispute that after the purchase made by the appellant, his name was not mutated in the records of the Municipality before the approval was

granted by the State Government. The question therefore, is: whether the failure to serve the notice on the appellant vitiates the approved Scheme? In our view, it does not.

It is seen that the Municipality was sent notice of the proposed acquisition as required under Section 36 and also under Section 38 of the Act. When such presumption was made, it would be obvious that the person in possession would be aware of the proceedings proposed for the execution of the Scheme and also acquisition thereof. It is true, as contended by Shri Sehgal, learned senior counsel for the appellants, that registration of a document in the office of the Sub-Registrar is a notice as envisaged under the Registration Act. But the question is: whether the public authorities are expected to go on making enquiries in the Sub-Registrar's office as to who would be the owner of the property? Reasonable belief, after due enquiry, contemplated under Section 38(1)(i) would envisage that the persons who are reputed to be known as owners of the immovable property which was proposed to be acquired after the Scheme was approved by the Government, are the actual owners of the property. It is now settled law that public functions are to be discharged through its officers and if there is delectation on their part in the performance thereof and the public inconvenience is enormous, the Court always considers the procedure to be directory. It has always considered, by catena of decisions of this Court, such a procedure to be directory. It it were a case where a reputed owner whose name has already been entered in the Municipal records and has paid the municipal taxes over a period to the Municipality of the Gram Panchayat, as the case may be, necessarily there would be scope for the authorities to reasonably believe, after due enquiry, that he would be the owner. If they derelict in making such enquiry or serving the notice, necessarily it may be held that its failure to get the notice served on the owner, who was believed to be the owner of the property, for the proposed acquisition, vitiates the acquisition made under the Schedule read with Section 59 of the Act. But if in a short interregnum there were successive sales and transfer of the land, the public authorities are not expected to go on making enquiries in the Sub-Registrar's office as to who would be the owner of the immovable property proposed to be acquired. The principle that registration is constructive notice has no application to such a situation.

The ratio of the full Bench of the High Court of Punjab & Haryana in Jodh Singh Vs. Jullundhur Improvement Trust [AIR 1984 (P&H) 398] is unexceptionable, but it has to be considered in the backdrop of the facts in each case. The Division Bench of the High Court in Pt. Ram Parkash & Anr. Vs. Smt. Kanta Suri [1985 PLJ 371] has not laid the law correctly. We, therefore, hold that the failure to serve personal notice on the appellants does not vitiate the proceedings for acquisition initiated pursuant to the approved Scheme.

It is then contended that the acquisition was mala fide since the Municipality itself had, on earlier occasion, proposed for acquisition and had dropped the same. We find no substance in the contention. There are two statutory authorities functioning, one under the Act and the other, the Municipality. When the statutory authority has initiated the action, necessarily the Municipality has to drop the proceedings. Therefore, it cannot be said that the acquisition was mala fide. That apart, there is no finding recorded by the courts below in the behalf. The High Court also has put out the case on the principle that unless in the circumstances the respondent proves prejudice in his case, discretionary relief for injunction cannot be granted. All the three courts refused to grant injunction to the appellant restraining the authorities from enforcing the Scheme duly framed. The injunction

is a matter of discretion. When the authorities have been implementing the Scheme for the benefit of the public of the town, the courts below have rightly refused to exercise discretion to grant injunction and have not committed and manifest error of law for correction by this Court. Moreover, the maintainability of suit under Section 9, Code of Civil Procedure, 1908 is doubtful. It is not necessary to examine the case as it is settled law that such suit is not maintainable.

It is next contended that the appellant had purchased the property for his own occupation to construct houses and alternatively gate could be opened from the western side - internal road, without causing hardship to the appellants. We find no force in the contention. The Scheme proposed to have direct access from the main road, namely, Madan Mohan Malviya Road. The access from the road on the western side of the stadium would create traffic hazards and, therefore, the Scheme was rightly framed for providing entry into the main gate. We have seen the plan. The Scheme has taken the property of minimal dimension rather than the large area in the locality. Under these circumstances, the Scheme was properly framed by the Government for providing access to the Guru Nanak Stadium.

It is then contended by Shri Sehgal that the appellant had purchased the property for residential purpose and he is deprived of his right for his residence in the locality. In view of the fact that competing public interest would outweigh the personal interest of the appellant, we think that he could be suitable accommodated in any available housing Schemes taken up by the respondent-Trust. The respondent-Trust, therefore, is directed to provide any suitable site of an extent of 250 sq.yds as per the prevailing reserved price.

This appeal is accordingly dismissed with the above observations. No costs.