

Before Permod Kohli, J
SATYA DEVI AND OTHERS,—Petitioners

versus

**MUNICIPAL COMMITTEE, BHATINDA AND
OTHERS,—Respondents**

C.W.P. No. 4759 of 1983

3rd April, 2008

Constitution of India, 1950—Art. 226—Punjab Municipal Act, 1911—S. 192—Municipal Committee formulating a Town Planning Scheme—Plot of petitioners intended to be transferred for road—Jamabandi showing sale and mutation of plot in favour of petitioners—S. 192(c) imposes restrictions on inclusion of more than 35% of land of an owner for scheme and not more than 25% of such land without payment of compensation—Almost entire land of petitioners sought to be transferred for scheme—No compensation paid to petitioners—Action of respondents in taking over entire plot area is illegal, unwarranted and violative of provisions of S. 192(c)—Petition allowed directing respondents not to transfer or take over more than 35% of plot area for utilization under Scheme—Petitioners also held entitled for payment of compensation in accordance with law for area beyond 25% of plot.

Held, that it is admitted by the respondents both in the reply as also *vide* endorsement on application of the petitioners dated 8th September, 1983 that almost 100% of the plot is being utilized for the road. There is a statutory restriction on taking over the property for the Scheme, more than 35% of the plot of an owner. The action of the respondents in taking over entire plot area of the petitioners is, thus, itself illegal, unwarranted and violative of Section 192(c) of the Punjab Municipal Act. It is also admitted case that the petitioners have not been paid any compensation. Under Section 192, plot area of an owner upto 25% can only be taken away without payment of compensation.

(Para 7)

J. R. Mittal, Sr. Advocate with Lalit Sharma, Advocate for petitioners.

Chetan Salath, Advocate for Rajan Gupta, Advocate for respondent
No. 1.

PERMOD KOHLI, J.

(1) The petitioners are aggrieved of the action of the respondents in notifying a Town Planning Scheme for Area No. 9 Part-I whereby plot of the land of the petitioners measuring 730 square yards out of total plot area of 750 square yards is sought to be transferred for utilization in the public road.

(2) It is alleged that the petitioners purchased plot measuring 750 square yards comprising Khasra No. 1990 situated at Bhatinda from Madan Lal son of Ramji Dass,—*vide* Registered Sale Deed No. 839, dated 20th May, 1971. Said Madan Lal had earlier purchased this plot from one Jangir Singh son of Sher Singh. On the basis of the aforesaid sale in favour of the petitioners Mutation No. 16008 has also been sanctioned in favour of the petitioners which is duly reflected in the Jamabandi for the year 1977-78. Respondent No. 1 formulated a Town Planning Scheme for the area No. 9 Part I. It is alleged that on coming to know of the said Scheme, the petitioners applied to respondent No. 1 on 8th September, 1983 for demarcation of their plot. The application was returned in original by respondent No. 1 with the endorsement “according to the Scheme leaving a small portion, the rest of the plot falls under the 100 ft wide road”. The petitioners have placed on record a site plan of the area showing the plot under the Scheme and it appears that only small portion of the plot that too a corner is out of the Scheme. It is stated that 730 square yards out of 750 square yard is intended to be transferred for the road. The petitioners have challenged the Scheme and the action of the respondents, *inter alia*, on the grounds-(1) that under Section 192 of the Punjab Municipal Act, not more than 35% of the built area can be included in the Scheme and not more than 25% of the area can be taken away, without payment of the compensation. (2) No public notice has been issued before the formulation and implementation of the Scheme. (3) The Scheme has not been sanctioned by the State Government as required under Section 190(2) (iii). (4) No ownership statement has been prepared as required under Section 192 of the Act.

(3) Respondent No. 1 in its written statement has admitted the formulation of the Scheme and its implementation. It is, however, stated that the petitioners have not placed on record copy of the sale deed and thus they have no locus to file the writ petition. Respondent No. 1 has also

pleaded that various works under the Scheme have been carried out. A massive construction has been raised by various owners. The Scheme is for the public utility and for the benefit of the public at large. Respondents, however, admitted that the petitioner's plot has come in the road and even the demarcation report is also admitted. However, it is stated that at the time of framing of the Scheme, no plot of the petitioners existed. The respondents, however, stated that there is no Scheme of 1983 and there is only one Scheme of 1977 for which objections were invited by public notice issued on 15th July, 1977. The Scheme was duly sanctioned by the Government on 17th February, 1979 and published in Government Gazette.

(4) The entire case of the petitioners is based upon the alleged violation of provisions of Section 192 of the Punjab Municipal Act which reads as under :—

“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 following matters, namely :—

- (a) the restriction of the erection of re-erection of the 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 percent, and the amount transferred without payment shall not exceed twenty- five percent, of any one owner's land within such unbuilt area.
- (ii) When a Scheme has been drawn up under the provisions in Sub-section (1) the Committee shall give public notice of such Scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person

may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.

- (iii) The Committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Deputy Commissioner, who may, if he thinks fit, return it to the Committee for reconsideration and re-submission by a specified date; the Deputy Commissioner shall submit the plans as forwarded, or as resubmitted, as the case may be, for the opinion to the State Government, who may sanction such scheme or may refuse to sanction it, or may return it to the Committee for reconsideration and resubmission by a specified date.”

(5) The petitioners have placed on record copy of the Jamabandi (Annexure P-1) which is not denied by the respondents. The Jamabandi for the year 1977-78 contains endorsement regarding the sale in favour of the petitioners by Madan Lal and consequential mutation of sale bearing No. 16008. In presence of these entries, the plea of the respondents that the petitioners have no locus as they have not placed on record the sale deed is without any substance. It is admitted case of the parties that out of 754 square yards of plot of the petitioners, 730 square yards is being utilized for 100 feet wide road comprised in the Scheme which means that almost 100% of the plot of the petitioners is being taken away. Section 19(c) of the Punjab Municipal Act clearly imposes restrictions on the inclusion of more than 35% of the land, of an owner for the Scheme and not more than 25% of such land, without payment of the compensation. As noticed above, almost entire land of the petitioners is sought to be transferred for the Scheme. Petitioners have specifically alleged that no compensation has been paid or even determined. This allegation has not been denied by the respondents in the reply filed.

(6) Though the petitioners have raised other grounds for quashing the Scheme like non-service of public notice and non-preparation of the ownership statement etc., but without going into the other questions this writ petition can be decided on two points-(1) Inclusion of more than 35% of the plot in the Scheme and (2) non-payment of the compensation.

(7) It is admitted by the respondents both in the reply as also vide endorsement on application of the petitioners dated 8th September, 1983 (Annexure P-2) that almost 100% of the plot is being utilized for the road. There is a statutory 100% restriction on taking over the property for the Scheme, more than 35% of the plot of an owner. The action of the respondents in taking over entire plot area of the petitioners is thus itself illegal, unwarranted and violative of Section 192(c) of the Punjab Municipal Act. It is also admitted case that the petitioners have not been paid any compensation. Under Section 192, plot area of an owner upto 25% can only be taken away without payment of compensation. Even this provision has been quashed by the Hon'ble Supreme Court in the judgment passed in the case of **Yogendra Pal and others versus Municipality, Bhatinda and another, (1)**. In the said case, the Hon'ble Supreme Court quashed provisions of Section 192(1) (c) of the Punjab Municipal Act, 1911 and the corresponding provisions of Section 203 (1) (c) of the Haryana Municipal Act, 1973, being violative of the Article 14 of the Constitution of India. The relevant observations of the Hon'ble Supreme Court read as under :—

“13. As held above, the provisions of S. 192(1)(c) of the Punjab Municipal Act, 1911 and of S. 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.....”

(8) After declaring the aforesaid provisions as ultra vires, the Hon'ble Supreme Court applied the judgment prospectively and made following observations :—

“13..... We are informed that till date the Municipal Committee 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 in 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.”

(9) The Hon’ble Supreme Court has declared that the part of Section 192 (1) (c) which, *inter-alia* provides for transfer of the land, without payment of compensation is ultra vires. However, since the judgment is prospective in nature and the Scheme in question was notified prior to that. The judgment has no application to the present case. However, the respondents cannot take away more than 35% of the petitioners’ land.

(10) The respondents have raised a dispute that there is only scheme of 1979 which has been sanctioned. They have placed on record copy of the notification. From the notification, it appears that though the Scheme was formulated in the year 1979. However, it has been sanctioned only on 15th March, 1983. Hence the plea of the petitioners that the Scheme as a whole is bad in law having not been sanctioned by the State Government cannot be accepted. In the totality of the circumstances, this petition is allowed and the Notification/Scheme to the extent it intends to take away the entire plot of the petitioners is hereby quashed. It is directed that respondents shall not transfer or take over more than 35% of the plot area of the petitioners for utilization under the Scheme. The respondents are further directed to pay compensation to the petitioners in accordance with law for the area beyond 25% of the plot within a period of two months alongwith interest at the rate of 6% per annum, if no statutory interest is provided. In the event statutory interest is provided, petitioners shall be entitled to such statutory interest.

R.N.R.