

possible. The soundness of this conclusion is reinforced when it is tested on the touch-stone of common sense view expressed by Sulaiman, J. with characteristic simplicity in the following words in *Net Singh and others v. The Receiver of the Estate of Gajraj Singh and another* (5).

“The policy of the legislature obviously seems to be that properties which cannot be attached and sold do not vest in the receiver. There is no injustice in this for when creditors cannot recover their debts by sale of the properties, they suffer very little if their representative, the receiver, cannot realise the debts out of such properties

For the reasons abovesaid, we allow these appeals (S.A.Os. 17 and 18 of 1969), but in view of the complex question of law involved we leave the parties to bear their own costs.

R. S. NARULA, C.J.,—I agree.

S. S. SANDHAWALIA, J.,—I agree.

K.S.K.

FULL BENCH

Before Bal Raj Tuli, S. S. Sandhawalia and D. S. Tewatia, JJ.

DEVINDER KAUR,—Petitioner.

versus

LUDHIANA IMPROVEMENT TRUST, ETC.,—Respondents.

LUDHIANA ETC.,—Respondents.

C. W. No. 3276 of 1969.

March 13, 1975.

Land Acquisition Act (I of 1894)—Section 23—Punjab Town Improvement Act (IV of 1922)—Section 59 and para 10 of Schedule—Amendment of section 23, Acquisition Act by section 59, Improvement Act—Whether results in discrimination—Clause (2) of para 10 of the Schedule and clauses (a), (d) and (f) added to sub-section 3 of section 23, Acquisition Act—Whether ultra vires Article 14, Constitution of India—Non-provision of the right of appeal under section 59, Improvement Act against the award made by the Tribunal—Whether hits Article 14, Constitution of India.

(5) A.I.R. 1925 All. 467.

Devinder Kaur v. Ludhiana Improvement Trust, Ludhiana, etc.
(Tuli, J.)

Held, that from the provision of para 10 of the Schedule to the Punjab Town Improvement Act, 1922, it is apparent that the market value to be determined under the amended provisions of section 23, Land Acquisition Act, 1894, will be less than the market value as determined under the provisions of the same section without the modifications prescribed in the Schedule. Under section 18 of the Punjab Municipal Act, 1911, any land can be acquired for the purposes of that Act by the State Government at the request of the municipal committee and that acquisition has to be made under the provisions of the Acquisition Act and on payment by the committee of the compensation awardable under that Act. It is thus obvious that if the State Government acquires land for a municipal committee within the town and for the improvement trust in the same town, different modes of determination of compensation will have to be followed and the compensation determined in one case will be less than the one determined in the other. Hence a clear case of discrimination arises. As the compensation to be awarded to the landowners whose land is acquired for a town improvement should not be less than the compensation determined for that land under the Land Acquisition Act, clause (2) of the Schedule and clauses (a), (d) and (f) added to sub-section (3) of section 23 of the Land Acquisition Act by clause (3) of para 10 of the Schedule to the Town Improvement Act, which have the effect of reducing the amount of compensation to an amount less than the amount payable under the Acquisition Act, are therefore, *ultra vires* Article 14 of the Constitution of India.. (Paras 2 and 5)

Held, that the non-provision of the right of appeal against the award made by the Tribunal under section 59 of the Improvement Act does not make the provisions of that section *ultra vires* Article 14 of the Constitution on the ground that a right of appeal has been provided in the Acquisition Act against the award of the District Judge to the High Court. (Para 5)

Case referred by the Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan, and Hon'ble Mr. Justice Gopal Singh on 7th January, 1971 to a Full Bench for decision of important question of law involved in this case. The Full Bench consisting of Hon'ble Mr. Justice Bal Raj Tuli, Hon'ble Justice S. S. Sandhawalia and Hon'ble Mr. Justice D. S. Tewatia, after deciding the question referred to, returned the case to the Division Bench on 13th March, 1975, for decision of the remaining points involved in the case and for determination of the amount of compensation.

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 order of the Tribunal (Respondent No. 2), dated 2nd April, 1969 and

the Award in dispute and a direction be issued to exempt the area of the petitioner from acquisition under this Scheme and the provisions of Section 59 of the Act (Punjab Town Improvement Act, 1922) be declared ultra vires and the Notification, if any, issued under section 36 of the Act be declared null and void and further praying that pending the disposal of the writ petition, status quo qua the plot of land acquired from the petitioner be ordered.

T. S. Mangat, Advocate, for the petitioner.

R. K. Aggarwal, Advocate, for Respondent No. 1.

I. S. Tiwana, Deputy Advocate-General, Punjab, for Respondent No. 5.

ORDER

TULI, J.—This Bench has been constituted to decide whether the mode of determining compensation prescribed by the amendment in the provisions of section 23 of the Land Acquisition Act, 1894 (hereinafter referred to as the Acquisition Act), by section 59 of the Punjab Town Improvement Act (hereinafter referred to as the Improvement Act), results in discrimination where the land of a citizen is acquired for the purposes of the Improvement Act. Another point for consideration is whether the non-provision of a right of appeal against the award of the Tribunal under the Improvement Act amounts to discrimination because under the Acquisition Act right of appeal has been provided against the award of the District Judge to the High Court. Reference to the Full Bench has been made by order dated January 7, 1971, passed by a Division Bench consisting of D. K. Mahajan and Gopal Singh, JJ. Previously, eight of these writ petitions came up for hearing before Suri, J., and he was informed that C.W. 2391 of 1970, in which the questions involved were the same as in the writ petitions before him, had been admitted direct to a Division Bench and was on the daily list of the III Division Bench. The learned Judge directed that the eight writ petitions before him should also be placed before that Bench. Thus nine writ petitions (Nos. 3276 of 1969, 2319, 2474, 2523, 2609, 2611, 2612, 2629 and 3013 of 1970) came up for hearing before the Bench consisting of D. K. Mahajan and Gopal Singh, JJ. L.P.A. Nos. 771 of 1970 and 30 and 33 of 1971 were also directed to be heard with this reference by the Division Bench hearing those appeals.

Devinder Kaur v. Ludhiana Improvement Trust, Ludhiana, etc.
(Tuli, J.)

(2) The land for a Town Improvement Trust is acquired under the Acquisition Act and section 59 of the Improvement Act has made certain modifications in the provisions of the Acquisition Act. These modifications are contained in the Schedule to the Improvement Act, para 10 of which mentions the amendments made to section 23 of the Acquisition Act and reads as under :—

“10(1). In clause first and clause sixthly of sub-section (1) of section 23 of the said Act, for the words ‘publication of the declaration relating thereto under section 6’ and the words ‘publication of the declaration under section 6’ shall be deemed to be substituted—

(a) if the land is being acquired under sub-section (3) of section 32 of this Act the words ‘issue of the notice under sub-section (3) of section 32 of the Punjab Town Improvement Act, 1922,’ and

(b) in any other case, the words ‘first publication of the notification under section 36 of the Punjab Town Improvement Act, 1922.’

(2) The fullstop at the end of sub-section (2) of section 23 of the said Act shall be deemed to be changed to a colon and the following proviso shall be deemed to be added :

‘Provided that this sub-section shall not apply to any land acquired under the Punjab Town Improvement Act, 1922 :

(3) At the end of section 23 of the said Act, the following shall be deemed to be added, namely :—

(3) For the purposes of clause first of sub-section (1) of this section.

(a) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause ;

(b) if it be shown that before such date, the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable

use of the same, further compensation based on his actual loss may be paid to him ;

- (c) if any person without the permission of the trust required by sub-section (1) of section 31 of the Punjab Town Improvement Act, 1922, has erected, re-erected, added to or altered any building or wall so as to make the same project beyond a street alignment or building line duly prescribed by the trust, then any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded ;
- (d) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under the Punjab Town Improvement Act, 1922 ;
- (e) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary use ; and
- (f) when the owner of the land or building has after the passing of the Punjab Town Improvement Act, 1922, and within two years preceding the date with reference to which the market-value is to be determined, made a return under any enactment in force of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market-value may be determined on the basis of such rent :

Provided that where any addition to, or improvement of the land or building has been made after the date

Devinder Kaur v. Ludhiana Improvement Trust, Ludhiana, etc.
(Tuli, J.)

of such latest return and previous to the date with reference to which the market-value is to be determined the Court may take into consideration any increase in the letting-value of the land due to such addition or improvement."

From the provisions of this para in the Schedule, it is apparent that the market value to be determined under the amended provisions of section 23 will be less than the market value as determined under the provisions of section 23 of the Acquisition Act without the modifications prescribed in the Schedule. In these circumstances, a question arises whether different mode for determining compensation in respect of lands acquired for a public purpose under the Acquisition Act and for the purposes of town improvement under the Improvement Act can be validly prescribed and, if prescribed, will be hit by the vice of discrimination which is prohibited by Article 14 of the Constitution. It was held by the Supreme Court in *Balammal and others v. State of Madras and others* (1), that clause 6(2) of the Schedule of the Madras City Improvement Trust Act (37 of 1950), read with section 73 of that Act, which deprived the owners of the statutory right to solatium at the rate of 15 per cent on the market value of the land is invalid and the owners of the lands are entitled to the statutory solatium under section 23(2) of the Land Acquisition Act in consideration of compulsory acquisition of their lands. It was further observed that—

"Sub-clause (2) of clause 6 of the Schedule to Act 37 of 1950, insofar as it deprived the owners of the lands of the statutory addition to the market value of the lands under section 23(2) of the Land Acquisition Act is violative of the equality clause of the Constitution, and is on that account void. If the State had acquired the lands for improvement of the town under the Land Acquisition Act, the acquiring authority was bound to award in addition to the market value 15 per cent solatium under section 23(2) of the Land Acquisition Act. But by acquiring the lands under the Land Acquisition Act as modified by the Schedule to the Madras City Improvement Trust Act 37 of 1950 for the Improvement Trust which also is a public purpose, the owners are, it is

(1) A.I.R. 1968 S.C. 1425.

claimed, deprived of the right to the statutory addition. An owner of land is ordinarily entitled to receive the solatium in addition to the market value, for compulsory acquisition of his land, if it is acquired under the Land Acquisition Act, but not if it is acquired under the Madras City Improvement Trust Act. A clear case of discrimination which infringes the guarantee of equal protection of the law arises and the provision which is more prejudicial to the owners of the lands which are compulsorily acquired must on the decisions of this Court, be deemed invalid."

It was thus recognised in this judgment that the compensation to be paid under the Improvement Act will not be less than the compensation payable under the Acquisition Act. The matter was made clear by the Supreme Court in *Nagpur Improvement Trust and another v. Vithal Rao and others* (2), which considered the effect of para 10 of the Schedule amending section 23 of the Acquisition Act, which was similar in terms to para 10 of the Schedule to the Improvement Act, which has been set out above. That case, therefore, directly covers the point that is for decision before us. In paragraph 17 of the report, it has been observed :

"It would be seen that the effect of the modifications in two respects is tremendous. First, the owner whose land is acquired under the Improvement Act is paid compensation not according to the market value of the land but the market value according to the use to which the land was put at the date with reference to which the market value is to be determined in that clause. In other words, if the land is being used for agricultural purposes, even though it has a potential value as a building site, the potential value is to be ignored. The second respect in which the owner suffers if the land is acquired under the Improvement Act is that he does not get a solatium of 15 per cent which he would have got if the land had been acquired under the Land Acquisition Act. It is true that he has some minor advantages which have been pointed out by the learned counsel but they have no comparison in value to the loss suffered by virtue of the market value being determined according to the use to which the land was

(2) A.I.R. 1973 S.C. 689.

Devinder Kaur v. Ludhiana Improvement Trust, Ludhiana, etc.
(Tuli, J.)

being put or the loss of 15 per cent of the market value of the land.”

It was then pointed out that the acquiring authority of the land for the Improvement Trust is the State Government and it is, therefore, quite clear that the Government can acquire for a housing accommodation scheme either under the Acquisition Act or under the Improvement Act. If this be so, it enables the State Government to discriminate between one owner equally situated from another owner. The matter is then dealt with in paras 22 to 28 of the report which bear repetition and are as under :—

- “22. The question then arises whether the High Court is right in holding that the impugned provisions were hit by Article 14 of the Constitution.
23. It is now well-settled that the State can make a reasonable classification for the purpose of legislation. It is equally well-settled that the classification in order to be reasonable must satisfy two tests (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. In this connection it must be borne in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.
24. What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purposes ?
25. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is a politician or an advocate. Why is this sort of classification not sustainable ? Because the object-being

to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.

26. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building? Can the legislature say that for a hospital land will be acquired at 50 per cent of the market value, for a school at 60 per cent of the value and for a Government building at 70 per cent of the market value? All three objects are public purposes and as far as the owner is concerned, it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned, it does not matter to him whether the land is acquired by one authority or the other.
27. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts would enable the State to give one owner different treatment from another equally situated, the owner, who is discriminated against can claim the protection of Article 14.
28. It was said that if this is the true position, the State would find it impossible to clear slums, to do various other

Devinder Kaur v. Ludhiana Improvement Trust, Ludhiana, etc.
(Tuli, J.)

laudable things. If this argument were to be accepted, it would be totally destructive of the protection given by Article 14. It would enable the State to have one law for acquiring lands for hospital, one law for acquiring lands for schools, one law (for) acquiring lands for clearing slums, another for acquiring lands for Government buildings, one for acquiring lands in New Delhi and another for acquiring lands in Old Delhi. It was said that in many cases, the value of the land has increased not because of any effort by the owner but because of the general development of the city in which the land is situated. There is no doubt that this is so, but Article 14 prohibits the expropriation of the unearned increment of one owner while leaving his neighbour untouched. This neighbour could sell his land and reap the unearned increment. If the object of the legislation is to tax unearned increment, it should be done throughout the State. The State cannot achieve this object piecemeal by compulsory acquisition of land of some owners leaving others alone. If the object is to clear slums, it cannot be done at the expense of the owners whose lands are acquired, unless, as we have said, the owners are directly benefited by the Scheme. If the object is to build hospitals, it cannot be done at the expense of the owners of the land which is acquired. The hospitals, schools etc. must be built at the expense of the whole community."

Following this judgment, a Full Bench of this Court held in *Harbans Kaur etc., v. Ludhiana Improvement Trust etc.* (3), that the denial of the benefits of the Acquisition Act to the persons whose lands are acquired under the Improvement Act will amount to violation of Article 14 of the Constitution and, therefore, all benefits under the Acquisition Act are to be allowed to the persons whose lands and properties are acquired under the Improvement Act. It may also be pointed out that under section 58 of the Punjab Municipal Act, 1911, any land can be acquired for the purposes of that Act by the State Government at the request of the municipal committee and that acquisition has to be made under the provisions of the Acquisition Act and on payment by the committee of the compensation

(3) I.L.R. (1973) 1 Pb. & Hr. 705.

awardable under that Act. It is thus obvious that if the State Government acquires land for a municipal committee within the town and for the improvement trust in the same town, different modes of determination of compensation will have to be followed and the compensation determined in one case will be less than the one determined in the other. Thus a clear case of discrimination arises. For this reason, clause (2) of the Schedule and sub-section 3(a), (d) and (f) added to section 23 of the Acquisition Act by clauses (3) of the Schedule, cannot be resorted to as the amount of compensation determined in accordance therewith will be less than the amount of compensation determined under section 23 of the Acquisition Act and, therefore, these provisions are *ultra vires* section 23 of that Act.

(3) The learned counsel for the Improvement Trust has invited our attention to the judgment of the Supreme Court in *Sarwan Singh etc. etc. v. The State of Punjab and others etc.* (4), wherein para 10 of the Schedule to the Improvement Act has been noticed as amending section 23 of the Acquisition Act and it has been observed that the said para provides some supplemental principles for determining the market value of the land according to the use to which the land is put on a material date. On the basis of the observations made in paras 3 to 6 of this judgment, it is submitted that section 59 of the Improvement Act and para 10 of the Schedule were held to be *intra vires* and, therefore, compensation can be determined under the mode provided by section 23 of the Acquisition Act as amended by para 10 of the Schedule. Thus, this decision appears to be directly in conflict with the previous decision of the Supreme Court in *Nagpur Improvement Trust and another v. Vithal Rao and others* (2) (supra). In this situation, we have to follow the decision of the larger Bench, even if prior in time, as was ruled by the Supreme Court in *Mattulal v. Radhe Lal* (5). With very great respect to the learned judges who decided *Sarwan Singh's case* (4) (supra), we cannot follow that decision on this point in preference to the decision in *Nagpur Improvement Trust case* (2) (supra), which is by a larger Bench, though prior in time, which was not considered in *Sarwan Singh's case* (4).

(4) *Sarwan Singh's case* (supra), however, also decided that the denial of the right of appeal available in the case of acquisition

(4) A.I.R. 1975 S.C. 394.

(5) A.I.R. 1974 S.C. 1596.

Devinder Kaur v. Ludhiana Improvement Trust, Ludhiana, etc.
(Tuli, J.)

under the Acquisition Act does not make section 59 of the Improvement Act *ultra vires* Article 14 of the Constitution. In view of that judgment, the attack on the *vires* of section 59 of the Improvement Act on that ground is no more available to the petitioners.

(5) For the reasons given above, it is held—

- (i) that the compensation to be awarded to the landowners where land is acquired for a Town Improvement Trust will not be less than the compensation determined for that land under the Land Acquisition Act and clause (2) and clauses (a), (d) and (f) added to sub-section (3) of section 23 of the Land Acquisition Act by clause (3) of para 10 of the Schedule to the Town Improvement Act, which have the effect of reducing the amount of compensation to an amount less than the amount payable under the Acquisition Act, are *ultra vires* Article 14 of the Constitution and are struck down, and
- (ii) the non-provision of the right of appeal against the award made by the Tribunal under section 59 of the Improvement Act does not make the provisions of that section *ultra vires* Article 14 of the Constitution on the ground that a right of appeal has been provided in the Acquisition Act against the award of the District Judge to the High Court.

All these cases will now go back to a Division Bench for decision on the remaining points involved in these cases and for determination of the amount of compensation in accordance with the decision recorded above.

S. S. SANDHAWALIA, J.—I agree.

D. S. TEWATIA, J.—I also agree.

K.S.K.