

title, the lesser one merged in it. It was rightly held that the pre-emptor steps into the shoes of the vendee from the date the sale took place. Therefore, the position that existed before the said sale is to be restored. It was in this situation that it was held that the tenant cannot be dispossessed in execution of the decree of pre-emption of sale.

(6) I am, therefore, of the considered view that the impugned order cannot be sustained. The petitioner is entitled to actual possession of the land in dispute. Consequently, this revision Petition is allowed, the impugned order of the learned Executing Court is set aside, and it shall now proceed to execute the decree in accordance with law and get delivered actual possession of the land in dispute to the petitioner. In the circumstances of the case, the parties are left to bear their own costs.

(7) The parties through their counsel are directed to appear before the learned Executing Court on 1st November, 1988.

S.C.K.

Before M. M. Punchhi and Ujagar Singh, JJ.

AKHARA SHRI BRAHAM BUTA AMRITSAR,—*Petitioner.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 8539 of 1988 (O. & M.)

October 10, 1988.

Constitution of India, 1950—Arts. 14, 19, 25 and 26—Land Acquisition Act (I of 1894)—S. 17(1)—Trust properties of religious and charitable institution acquired invoking provisions of urgency—Immunity claimed from acquisition—Notification challenged as violative of fundamental rights—Such properties—Whether immune from acquisition—Acquisition—Whether destructive of fundamental right of religious sect to establish and maintain institution.

Held, that Article 26 of the Constitution of India, 1950 does not guarantee the freedom to establish and maintain a religious and charitable institution at a particular place or to make it immune from acquisition under the provisions of the Land Acquisition Act, 1894. The free practice of religion presupposes the practising of it

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anywhere and not at any particular place. The acquisition of land of such institution does not by itself destroy or completely negative the right of any denomination to establish or maintain any institution for religious purposes. On the receipt of compensation payable on account of the acquisition, the religious denomination can always acquire any other property for the same purpose for which the acquired land was being utilised. In this sense neither is the institution killed nor destroyed merely by the acquisition of its properties. It can achieve the same purpose by moving elsewhere like a natural person. (Para 10).

Petition under Article 226 and 227 of the Constitution of India praying that :—

- (a) *the entire record of acquisition proceedings including the earlier acquisition proceedings be summoned for the just and proper decision of the writ petition ;*
- (b) *the writ petition be allowed and a Writ in the nature of Certiorari be issued quashing the impugned Notification, annexure "P. 5" ;*
- (c) *further directions in the nature of Mandamus be issued to the respondents restraining them not to interfere in the rights of the petitioner for the purpose of administration and management in respect of the petitioner-institution which consists of several Samadhis, temples, Gaddis, and other connected and subservient purposes;*
- (d) *any other suitable writ, order or direction in the matter as this Hon'ble Court may deem fit and proper in the circumstances of the case be issued;*
- (e) *ad-interim stay order as prayed for in the stay application may please be issued by dispensing with the requirements of the High Court Writ Jurisdiction Rules :*
- (f) *the production of the certified copies of the annexures may please be dispensed with; and*
- (g) *the petitioner be awarded the costs of the writ petition.*

CIVIL MISC. NO. 12969 of 1988

Application under Section 151 of the Code of Civil Procedure praying that during the pendency of the writ petition the operation of the impugned notification, Annexure "P. 5" may kindly be stayed and in consequence thereof the dispossession of the petitioner may also be stayed and the respondents be restrained from interfering with the rights of the petitioner-institution in respect of the institution.

P. K. Palli, Sr. Advocate with A. V. Palli, Advocate.

K. P. Bhandari, A.G., Punjab for State.

Haminder Lal, Advocate, for the Municipal Corporation Amritsar,

JUDGMENT

M. M. Punchhi, J.

(1) Akhara Shri Braham Buta, Amritsar, is the common writ petitioner in these two writ petitions, Nos. 8539 and 8653 of 1988.

(2) Challenge has been made in both these petitions to a notification dated August 25, 1988, issued under section 4 of the Land Acquisition Act, 1894, invoking the provisions of urgency under section 17(1) of the said Act, withdrawing application of section 5-A in relation to the acquisition. The properties specified to be acquired, so far as they relate to the petitioner, are a Mandir Shivji and a building of the Akhara Shri Braham Buta in the occupation of Mahant Ravinder Dass. The areas of these two properties are 85.00 and 2565.45 square yards respectively.

(3) That the petitioner is a religious and charitable institution styled as a Trust is beyond dispute. Being a juristic person it has to act through live persons. Civil Writ Petition No. 8539 of 1988 has been filed by the institution through Mahant Ravinder Dass who is shown in the challenged notification to be in occupation of the building of the institution. Civil Writ Petition No. 8653 of 1968 has been preferred by the institution through Mahant Sant Sarup. Statedly both are at loggerheads in the Civil Court about their managerial rights over the institution and the properties sought to be acquired. In anticipation of filing these petitions, the State of Punjab and the Municipal Corporation, Amritsar, had entered caveats. Treating these matters as one, as it should be, we heard both the counsel for the petitioner in the respective two cases and the Advocate-General, Punjab.

(4) Both learned counsel for the petitioner Sarvshri P. K. Palli and Rs. S. Bindra have conceded outright that no provision under the Land Acquisition Act, 1894 impedes or prohibits acquisition of religious and charitable properties except a caution occurring in the Standing Orders issued by the Financial Commissioner, Punjab, which are of antiquity, to avoid as far as possible acquisition of religious and charitable properties. It has also been conceded by learned counsel that these Standing Orders have the status of executive instructions only as held by this Court in *Ranjit Kaur v. State of Punjab*, (1), 1983, and a writ petition to enforce those instructions would not lie.

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(5) Now for the institution itself, it may be mentioned that it belongs to the Udasi sect founded by Baba Siri Chand, a son of Guru Nanak. Traditionally, the institution was managed by a Mahant and succession thereto is hereditary and traditional from Guru to disciple. Admittedly the institution is spread throughout the country and has various buildings where the tenets of the institution and the school of thought, it stands for, is preached and propagated. The location of the institution is placed at a conspicuous place close to the proximity of the Golden Temple, Amritsar.

(6) The notification under challenge is similar to the many which have been implemented and others which are likely to follow towards accomplishment of a Corridor Plan around the Golden Temple area at Amritsar. One such notification issued on June 6, 1988, was similarly attacked before this Court. A Division Bench of this Court in *Smt. Daljit Kaur and another v. Municipal Corporation of Amritsar, and another*, (2), dismissed the petition *in limine* by observing as follows :—

“The next attack thereto is that the primary object of the notification is ‘beautification of the area’ by laying new public streets and by providing public parking places around the Golden Temple Complex, and these purposes are hardly covered under the urgency provisions of section 17 of the Act, for they are time-consuming and could well be taken care of without resort to the urgency provisions. It has been suggested that we can unfold the purpose and find out that something else is sought to be achieved. Besides, it has been urged that it will put the petitioners and many other persons, similarly situated, to lot of inconvenience and the mere suggestion that adequate compensation would be provided and rehabilitatory schemes put into effect would be of no use. We have pondered over the matter, but we are not impressed by the argument. The project on the face of it is variegated in nature and multifarious in content. What may seem to one eye may not seem to another. The widening of streets and providing of parking places, beautification and redevelopment of the area around Golden Temple Complex, is one aspect of the acquisition. Besides, it has

(2) C.W.P. 7839 of 1988 decided on June 10, 1988.

been viewed that it would be serving the purpose of preserving and improving peace, law and order and safety of the public. Now this aspect of the purpose cannot be undermined. We can take judicial notice of the fact that Amritsar has been experiencing in the last few years and in particular, in the last couple of months. This purpose i.e. of preserving and improving peace, law and order and safety of the public would be dear to every citizen of the country and the public at large. So, in this situation, as has been indicated in the opening part of this order, 'invalid good' must make way to 'public good' and all sentimentality and all the cry for commercial convenience etc. must drown before the larger cry for improvement of peace, law and order and safety of the public. This contention accordingly of the learned counsel for the petitioners we reject unhesitatingly.

It has then been contended that the petitioners would be uprooted and thrown away to distant places where rehabilitation would not be possible to the same extent and limit as of living in the complex from which they are sought to be uprooted. When land is acquired under the Land Acquisition Act it is impossible to rehabilitate the oustees at identical places from the point of view of commerce or otherwise. The Legislature in its wisdom, cognizant of the inherent sentimentality involved in it, evolved payment of 30 percent as solatium, that is to say, money compensation as solace for the injury inflicted. Nothing more could be done for an individual by the State and indirectly by the people in a democracy governed by the Rule of Law living in a Welfare State.

Besides, the Advocate-General, Punjab, has made a statement before us that rehabilitation schemes have already been put in vogue and many more are in the pipeline to see that the trickling tears which are inevitable are wiped out as quickly as possible in the circumstances. We trust him in that regard.

For the foregoing reasons, we find no merit in the petition and dismiss the same.

June 10, 1988.

Sd./- M. M. Punchhi,
Judge.

Sd./- M. R. Agnihotri,
Judge.

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(7) The above decision should have been a complete answer to the contention of the petitioners, because it is for the same purpose that the present notification, under challenge, has been made and as part of the same objectives. Each learned counsel for the petitioner, however, had an additional point which we deal hereafter.

(8) Mr. Palli painstakingly accounted the history of the institution and the effort earlier made by the Improvement Trust, Amritsar, to acquire its properties on an earlier occasion under the provisions of the Punjab Development and Damaged Areas Act, 1951, and the effort being stalled by this Court in a decision rendered in CWP No. 365 of 1979 decided on April 2, 1980,—*vide* judgment Annexure P-4. He termed the present effort to be continuation of the same effort. Obviously it is not, in view of *Smt. Daljit Kaur's* case (supra). The venture is new and efficacious to meet the alarming situation of the present and the future keeping in view the events of the past. We find no force in this contention on that count. Additionally, Mr. Palli contended that the institution was being destroyed in order to preserve another institution and, therefore, it was violative of Articles 14, 19 and 25 of the Constitution. This contention we propose to reply a little later.

(9) Mr. R. S. Bindra, learned counsel for the petitioner, contended that the acquisition was completely violative of Articles 25 and 26 of the Constitution, as acquisition of religious places is totally prohibited under the Constitution. He relied on *Mahant Ram Kishan Dass v. State of Punjab and others*, (3) to contend that the Samadh therein had been left out from acquisition and from this it was inferable that since the survival of the Samadh was itself at stake the State voluntarily walked out of the acquisition.

(10) We are not impressed by the arguments of both learned counsel. The institution is quite apart from the brick and mortar which has gone to make the Shiv Mandir and the building in the complex known as Akhara Shri Braham Buta. Descriptively it is said to contain a few Samadhs, some pictures and idols of Hindu deities, besides in the Shiv temple, the Shiv-ling. The avowed object of the impugned notification is not to preserve the Golden Temple

at the pain of death of other surrounding institutions but the effort is founded in larger public interest as seen in *Smt. Daljit Kaur's* case (supra). The petitioner being a religious denomination cannot, as held by the Supreme Court in *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj etc. v. The State of Gujarat and others*, (4) claim itself to be a citizen so as to invoke the protection of Article 25 of the Constitution and sequely the protections of Articles 14 and 19 of the Constitution in the limited arena of the present set of facts. Article 26, however, confers on every religious denomination, or any section thereof, the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovaole property; and to administer such property in accordance with law, but subject to public order, morality and health of the society. These rights for the religious denominations were also earlier spelled out in *Khajamian Wakf Estates etc. v. The State of Madras etc.* (5). Article 26, however, does not guarantee the freedom to establish and maintain a religious and charitable institution at a particular place or to make it immune from acquisition under the provisions of the Land Acquisition Act. The free practice of religion presupposes the practising of it anywhere and not at any particular place. The acquisition of land of such institution does not by itself destroy or completely negative the right of any denomination to establish or maintain any institution for religious purposes. On the receipt of compensation payable on account of the acquisition, the religious denomination can always acquire any other property for the same purpose for which the acquired land was being utilized. In this sense neither is the institution killed nor destroyed, merely by acquisition of its properties. It can achieve the same purpose by moving elsewhere like a natural person. Thus, for the aforesaid reasoning, we are of the considered view that by the acquisition of the afore-specified properties neither is the institution destroyed or annihilated nor is the action of the respondents violative of Articles 14, 19, 25 and 26 of the Constitution. We hold it accordingly.

(11) The learned Advocate-General, Punjab, on his own volunteered that on the acquisition of the land and the properties afore-specified, no wanton destruction of the Samadhs, pictures, idols and the Shiv-ling would be permitted from any quarter. Should the

(4) A.I.R. 1974 S.C. 2098.

(5) A.I.R. 1971 S.C. 161.

Chander Kumar Anand and others v. Daropadi Devi (N. C. Jain, J.)

institution like these removed with proper ceremony and respect to be placed elsewhere, the State would be willing to help the petitioner in that regard. But, he further said that should the institution abandon the aforesaid objects of worship and reverence, then the State would deal with them in a manner appropriate to the veneration they generate in the masses. We did not encourage him to elaborate the arrangement in that regard, for we would not like to be drawn in to lay down as to what is fit and proper to be done in the circumstances of the case. All what we can say is that a democratic Government functioning in a Welfare State must be sensitive to the sentiments of its people, which includes sections thereof. They would expect from the Government at least no highhandedness in matters like these and no disrespect to the objects afore-named under the misunderstood concept of secularism.

(12) Before parting with the judgment, we had it clarified from Mr. Palli that the Samadhs in the building of the institution are not burial grounds of the Mahants in the line of succession but are identifying places where the metal urns containing ashes of the side-lining Mahants lie buried. These too can be removed and given the same reverence as to the pictures and idols of Hindu deities. This clarification, we thought, was necessary to conclude.

(13) And concludingly, we dismiss these two petitions *in limine*.

R. N. R.

Before Naresh Chander Jain, J.

CHANDER KUMAR ANAND AND OTHERS,—*Petitioners.*

versus

DAROPADI DEVI,—*Respondent.*

Civil Revision No. 1861 of 1980

September 13, 1988.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2) (ii)(b)—Change of user—Shop used for running a tea stall—Tenant starting manufacturing of Pens—Effect of such change of user—Tenant whether liable to eviction.