

A JALANDHAR IMPROVEMENT TRUST

v.

VINOD KUMAR AND ORS.
(Civil Appeal No. 5461 of 2011)

B JULY 15, 2011

[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]

C *Punjab Public Premises Land (Eviction and Rent Recovery) Act, 1973 – ss. 5 and 7 – Initiation of – Proprietary rights – Land in question was part of the Development Scheme developed by the Punjab Government – Respondent claimed that they were Displaced persons from Pakistan and were in possession of the said land as an evacuee property – Order of Civil Court that respondents not*
D *be dispossessed from the property otherwise than in due course of law – Appellant initiated proceedings under the Public Premises Act for eviction of the respondents – The proceedings were stopped when the case file got lost at the stage of evidence – Respondents filed writ petition contending*
E *that the proceedings under the Public Premises Act was without jurisdiction – In terms of the orders of High Court, matter was placed before the Settlement Commissioner who held that the case could not be decided in view of repeal of the Displaced Persons Act – Respondents filed another writ*
F *petition for quashing the order of the Settlement Commissioner – High Court remanded back the matter to the Settlement Commissioner once again to consider the claims of the respondents and also stayed their dispossession till the matter was decided by the Settlement Commissioner – On*
G *appeal, held: Since the Evacuee Property Act has been repealed, there is no justification in the order passed by the High Court remanding back the matter to the Settlement Commissioner to consider the claim of the respondents once again inasmuch as the issue as to whether or not respondents*

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are authorised or unauthorised occupants of the land in dispute and as to whether or not the respondents are entitled to alternative plots or rehabilitation are matters which can be adjudicated upon separately in accordance with law but not in the manner as suggested by the High Court – Even if respondents are entitled to rehabilitation under any law the same has to be established by due process of law – But they cannot claim any land within the acquired area/55.0 Acres of Development Scheme but in case an order is passed in their favour, they would be rehabilitated in alternative plot(s) – Therefore, they would have to prove their case before the competent authority and not before the Settlement Commissioner – However, in order to comply with the directions of the Civil Court and also for eviction in accordance with law, proceeding initiated under the Public Premises Eviction Act should be continued till the same comes to a logical end – Evacuee Property Act, 1950 – Displaced Persons (Compensation & Rehabilitation) Act, 1954.

Respondents filed application for grant of proprietary rights in respect of land measuring 2-1/2 kanals in the 55.0 Acres Development Scheme developed by the Punjab Government contending that they were displaced persons from Pakistan and were in occupation of the said land since the year 1947 by way of evacuee property. The application was dismissed by the Naib Tehsildar (S), M.O. on 3-8-1981 on the ground that the said area had already been acquired by the appellant-Improvement Trust Jalandhar and that it was not an evacuee property. The respondents then filed appeals before the Settlement Commissioner which vide its order dated 5-10-1981 remanded the matter to the Tehsildar (S)-cum-M.O., for decision afresh.

Earlier, an Award had been passed on 05.01.1977 by the Land Acquisition Collector, Jalandhar Improvement Trust and in the said Award, it was stated that the State

A Government (Local Government) vide their notification dated the 10th July, 1975, issued under Section 42 of the Punjab Town Improvement Act, 1922, had accorded sanction to the Development Scheme for an area measuring approximately 55.0 acres. The Land Acquisition Collector vide its Award dated 05.01.1977 held that the land occupied by the respondents had already been received by the Improvement Trust, Jalandhar in the package deal.

C In the meantime the predecessor-in-interest of the respondents Nos. 1 & 2 filed a civil suit seeking for injunction restraining the appellant from dispossessing the predecessor-in-interest from the land illegally, unlawfully or by force. The Trial Court, namely, the Sub Judge passed an order in the said suit that the plaintiff D would not be dispossessed from the suit property otherwise than in due course of law. The said order of the Trial Court was also upheld by the Additional District Judge. Subsequent to the aforesaid order, an application under Sections 5 and 7 of the Punjab Public Premises E Land [Eviction and Rent Recovery] Act No. 31 of 1973 was filed by the appellant initiating a proceeding for eviction of the respondents. The competent authority issued notice to the respondents and at the stage when the said proceeding was at the stage of evidence, the file F of the case got lost, consequent upon which the proceeding was stopped.

G The respondents filed Writ Petition before the High Court contending *inter alia* that the aforesaid land is an evacuee property and therefore the aforesaid initiation of proceedings under Sections 5 and 7 of the Punjab Public Premises Land [Eviction and Rent Recovery] Act No. 31 of 1973 was without jurisdiction. The High Court disposed of the said writ petition by holding that if the

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Settlement Commissioner found that the claim of the respondents was without any merit and they were not entitled to any alternative sites/rehabilitation then they would also have no action to claim to retain the sites which were under their possession. Pursuant to the aforesaid directions of the High Court the matter was placed before the Sub Divisional Magistrate, Jalandhar (Settlement Commissioner) by the respondents for allotment of property. The Sub Divisional Magistrate, Jalandhar (Settlement Commissioner) passed order dated 27-4-2007 holding that the case could not be decided in view of repeal of Displaced Persons (Compensation & Rehabilitation) Act, 1954 by the Ministry of Law and Justice, Legislative Department, New Delhi. Thereupon, the respondents filed a separate writ petition for quashing the order dated 27-4-2007 passed by the Settlement Commissioner/Sub Divisional Magistrate. The High Court remanded back the matter to the Settlement Commissioner once again to consider the claims of the respondents and also stayed their dispossession till the matter was decided by the Settlement Commissioner. The said order of the High Court was challenged in the present appeal.

Allowing the appeal, the Court

HELD:1. There can be no dispute with regard to the fact that the land in dispute is a part of the Award passed on 05.01.1977 and the same belongs to the Punjab Town Improvement/Government being a part of development scheme. The respondents claimed to be in possession of the said land as an evacuee property. If in case the respondents were in possession of the said land as an evacuee property and not as encroachers meaning thereby holding right and title to hold and possess such land, they were required to challenge the Award passed on 05.01.1977. The said Award having not been

A challenged by the respondents the same has become
final and binding on all concerned. [Para 17] [132-E-G]

B 2. The civil suit filed by the predecessor-in-interest of
the respondents Nos. 1 & 2 was disposed of by the trial
court, namely, the Sub Judge with a direction that the
plaintiff would not be dispossessed from the suit
property otherwise than in due course of law as
respondents were in possession of the land, may be as
encroachers. Consequent thereto, the appellant moved
C the competent authority for initiation of proceedings
under the Punjab Public Premises Land (Eviction and
Rent Recovery) Act, 1973 [the Eviction Act]. In the said
proceedings all the issues could be urged as to whether
or not the respondents were owners and had their rights
D over the disputed land and also as to whether or not
the appellant was owner of the land and as to whether or not
the respondents were authorised occupants or
unauthorised occupants of the land. It was also averred
clearly in the writ petition and also in this appeal that the
E respondents were allotted four alternative plots in lieu of
their occupation of the land which is part of the disputed
land. The aforesaid fact although has been disputed by
the respondents in their counter affidavit but no
documentary evidence has been placed on record to
F indicate that the aforesaid land was not allotted by the
Government to the respondents and that they had
purchased the land by paying full consideration thereof
from the competent authority. [Para 18] [132-H; 133-A-D]

G 3. Whether or not the respondents are lawful owners
of the land in question or they are mere encroachers and
liable to be evicted would be gone into and decided
although in a summary manner in the proceedings which
were initiated against them. [Para 19] [133-E]

H 4. Since the Evacuee Property Act, 1950 has been
repealed, there is no justification in the order passed by

the High Court remanding back the matter to the Settlement Commissioner to consider the claim of the respondents once again inasmuch as the issue as to whether or not respondents are authorised or unauthorised occupants of the land in dispute and as to whether or not the respondents are entitled to alternative plots or rehabilitation are matters which can be adjudicated upon separately in accordance with law but not in the manner as suggested by the High Court. Even if respondents are entitled to rehabilitation under any law the same has to be established by due process of law. But they cannot claim any land within the acquired area/ 55.0 Acres of Development Scheme but in case an order is passed in their favour, they would be rehabilitated in alternative plot(s). Therefore, they would have to prove their case before the competent authority and not before the Settlement Commissioner. However, in order to comply with the directions of the Civil Court and also for his eviction in accordance with law, proceeding has to be initiated under the Public Premises Eviction Act, which stands initiated, and therefore, the said proceeding should be continued till the same would come to a logical end. [Para 20] [133-F-H; 134-A-C]

5. The order passed by the High Court is set aside and it is held that the proceedings initiated against the respondents under Sections 5 and 7 of the Eviction Act would be allowed to be continued and the same shall be brought to a logical end as expeditiously as possible. [Para 21] [134-D]

6. The land in question is a part of the Development Plan and therefore the matter requires urgent consideration. In any case the land in question being a part of the Development Plan cannot be left to the occupation of the respondents if they are held to be encroachers by passing an interim order. Therefore, the

A proceedings to adjudicate upon and decide as to whether or not respondents are authorised or unauthorised occupants of the land in dispute should be completed and brought to an end. As to whether or not the respondents are encroachers would also be decided
B in the said proceeding. All other claims regarding entitlement of alternative plot or rehabilitation and whether or not such land is already allotted as rehabilitation package could be raised by the respondents only after the proceeding initiated under the
C Eviction Act is finalised and also depending on its outcome. Six months time is granted to the competent authority to complete proceedings initiated under Sections 5 and 7 of the Eviction Act, so that, the matter is disposed of as expeditiously as possible as the same is pending for a very long time. [Paras 22, 23] [134-E-H; 135-A]
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E From the Judgment & Order dated 30.4.2009 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 10203 of 2007.

F Samarth Sagar, Arun K. Sinha, Sumit Sinha for the Appellant.

Dinesh Verma, Rajat Sharma, Dr. Vipin Gupta for the Respondent.

The Judgment of the Court was delivered by

G **DR. MUKUNDAKAM SHARMA, J. 1.** For the reasons stated in the application for condonation of delay, we are of the view that there is sufficient cause for such condonation. Accordingly, delay condoned.

H 2. Leave granted.

3. This appeal is directed against the judgment and order dated 30.04.2009 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 10203 of 2007, whereby the High Court disposed of the writ petition by remanding back the matter to the Settlement Commissioner for considering the claims of the respondents while maintaining status quo in the matter.

4. Brief facts leading to the filing of the present appeal are that the land in dispute belongs to the State. It is averred by the respondents that they have occupied the land in dispute in the year 1947, measuring 2-1/2 kanals in Khasra No. 16693/6729 in the 55.0 Acres Development Scheme as they were displaced persons from Pakistan. On the other hand the appellant – Improvement Trust Jalandhar has stated that respondents encroached the said land which belongs to the Government.

5. An Award was passed on 05.01.1977 by the Land Acquisition Collector, Jalandhar Improvement Trust in Land Acquisition No. 1 of 1975-76 and in the said Award, it was stated that the State Government (Local Government) vide their notification No. 8080-3CI-75/21963 dated the 10th July, 1975, issued under Section 42 of the Punjab Town Improvement Act, 1922, accorded sanction to the Development Scheme for an area measuring approximately 55.0 acres on Police Lines Road, behind Commissioner's Office, Jalandhar framed by the Jalandhar Improvement Trust. The aforesaid Trust vide its Memorandum No. JIT/3058 dated the 26th July, 1975, applied for the acquisition of the non-evacuee and composite property comprised in the Scheme under the Land Acquisition Act, 1894. It was also stated in the aforesaid award that according to the acquisition file prepared by the revenue staff of the Trust total area of the scheme works out to be 598 Kanal 2 Marlas and out of this area measuring 69 Kanals and 2 Marlas belongs to the Improvement Trust, Jalandhar itself. The aforesaid Award included the area in dispute which is the subject matter of the present case.

A 6. The respondents, however, contended inter alia that they are in occupation of the said land by way of evacuee property as they were being displaced persons from Pakistan. The said land was transferred to the Improvement Trust, Jalandhar for the execution of 55.0 Acres Development Scheme developed by B the Punjab Government. The Land Acquisition Collector vide its Award dated 5th January, 1977 held that the land occupied by the respondents had already been received by the Improvement Trust, Jalandhar in the package deal.

C 7. Respondents filed an application for grant of proprietary rights in respect of land measuring 2-1/2 kanals in Khasra No. 16693/6729 in the 55.0 Acres Development Scheme. However, the application filed by the respondents for grant of proprietary rights was dismissed by the Naib Tehsildar (S), M.O. Jalandhar on 03.08.1981 on the ground that the aforesaid area had D already been acquired by the Improvement Trust Jalandhar and that it was not an evacuee property.

E 8. The respondents then filed appeals before the Settlement Commissioner, Punjab, Rehabilitation Department, Jalandhar against the order dated 03.08.1981 which were accepted by the Settlement Commissioner vide its order dated 5.10.1981 and remanded the matter to the Tehsildar (S)-cum-M.O., Jalandhar for fresh decision, after hearing the respondents.

F 9. In the meantime the predecessor-in-interest of the respondents Nos. 1 & 2 filed a civil suit seeking for injunction restraining the appellant herein from dispossessing the predecessor-in-interest from the land illegally, unlawfully or by force. The Trial Court, namely, the Sub Judge passed an order G in the said suit that the plaintiff would not be dispossessed from the suit property otherwise than in due course of law. The said order of the Trial Court was also upheld by the Additional District Judge, Jalandhar vide his judgment dated 18.01.1985.

H 10. Subsequent to the aforesaid order, an application

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under Sections 5 and 7 of the Punjab Public Premises Land [Eviction and Rent Recovery] Act No. 31 of 1973 [hereinafter referred to as the "Eviction Act"] was filed by the appellant initiating a proceeding for eviction of the respondents. The competent authority issued notice to the respondents and at the stage when the said proceeding was at the stage of evidence, the file of the case lost, consequent upon which the proceeding was stopped.

11. In the meantime the respondents filed a Writ Petition before the Punjab and Haryana High Court contending inter alia that the aforesaid land is an evacuee property and therefore the aforesaid initiation of proceedings under Sections 5 and 7 of the Punjab Public Premises Land [Eviction and Rent Recovery] Act No. 31 of 1973 is without jurisdiction.

12. The appellant herein filed a counter affidavit in the said writ petition. The High Court by its order dated 12.05.2006 disposed of the said writ petition by holding that if the Settlement Commissioner finds that the claim of the respondents is without any merit and they are not entitled to any alternative sites/rehabilitation then they would also have no action to claim to retain the sites which are under their possession. Pursuant to the aforesaid directions of the High Court the matter was placed before the Sub Divisional Magistrate, Jalandhar by the respondents herein for allotment of property comprising in Khasra No. 16693/6729 situated in Bhisti Darwaja, Civil Lines, Jalandhar.

13. The Sub Divisional Magistrate, Jalandhar passed an order dated 27.04.2007 holding that the case could not be decided in view of repeal of Displaced Persons (Compensation & Rehabilitation) Act, 1954 by the Ministry of Law and Justice, Legislative Department, New Delhi.

14. Thereupon, the respondents herein filed a separate writ petition for quashing the order dated 27.04.2007 passed by the Settlement Commissioner which was registered as 10203 of

A 2007. In the said writ petition the State of Punjab filed its counter affidavit in which it was averred that the respondents have already transferred their land which was being used as residential. With regard to the remaining land being used for Dairy, it was stated that they are not using the said land as the Dairy business has been shifted to Jansher Tehsil Jalandha in the light of the decision of Municipal Corporation of Jalandhar wherein the respondents have been allotted four different plots bearing Nos. 139 to 142 vide letter dated 12.03.2008.

C 15. The High Court passed an order dated 30.04.2009 which is the impugned order herein and whereby the High Court remanded back the matter to the Settlement Commissioner once again to consider the claims of the respondents and also stayed their dispossession till the matter is decided by the Settlement Commissioner.

D 16. Being aggrieved by the said order the present appeal was filed on which we heard the learned counsel appearing for the parties. Counsel appearing for the parties have taken us meticulously through the entire records.

E 17. There can be no dispute with regard to the fact that the land in dispute is a part of the Award and the same belongs to the Punjab Town Improvement/Government being a part of development scheme. The respondents claimed to be in possession of the said land as an evacuee property. If in case the respondents were in possession of the said land as an evacuee property and not as encroachers meaning thereby holding right and title to hold and possess such land, they were required to challenge the Award passed on 05.01.1977. The said Award having not been challenged by the respondents the same has become final and binding on all concerned.

H 18. The civil suit filed by the predecessor-in-interest of the respondents Nos. 1 & 2 was disposed of by the trial court, namely, the Sub Judge with a direction that the plaintiff would not be dispossessed from the suit property otherwise than in

due course of law as respondents were in possession of the land, may be as encroachers. Consequent thereto, the appellant has moved the competent authority for initiation of proceedings under the Punjab Public Premises Land (Eviction and Rent Recovery) Act, 1973. In the said proceedings all the issues could be urged as to whether or not the respondents are owners and have their rights over the disputed land and also as to whether or not appellant is owner of the land and as to whether or not the respondents are authorised occupants or unauthorised occupants of the land. It was also averred clearly in the writ petition and also in this appeal that the respondents have been allotted four alternative plots in lieu of their occupation of the land which is part of the disputed land. The aforesaid fact although has been disputed by the respondents in their counter affidavit but no documentary evidence has been placed on record to indicate that the aforesaid land was not allotted by the Government to the respondents and that they had purchased the land by paying full consideration thereof from the competent authority.

19. Be that as it may, as to whether or not the respondents are lawful owners of the land in question or they are mere encroachers and liable to be evicted would be gone into and decided although in a summary manner in the proceedings which were initiated against them.

20. Since the Evacuee Property Act, 1950 has been repealed, we see no justification in the order dated 30.04.2009 passed by the High Court remanding back the matter to the Settlement Commissioner to consider the claim of the respondents once again inasmuch as the issue as to whether or not respondents are authorised or unauthorised occupants of the land in dispute and as to whether or not the respondents are entitled to alternative plots or rehabilitation are matters which can be adjudicated upon separately in accordance with law but not in the manner as suggested by the High Court. Even if respondents are entitled to rehabilitation under any law the

A same has to be established by due process of law. But they cannot claim any land within the acquired area/55.0 Acres of Development Scheme but in case an order is passed in their favour, they would be rehabilitated in alternative plot(s). Therefore, they would have to prove their case before the competent authority and not before the Settlement Commissioner. However, in order to comply with the directions of the Civil Court and also for his eviction in accordance with law, proceeding has to be initiated under the Public Premises Eviction Act, which stands initiated, and therefore, the said proceeding should be continued till the same would come to a logical end.

21. The respondents have not challenged the award and therefore the aforesaid Award has become final and binding. Therefore, we set aside the order passed by the High Court and hold that the proceedings initiated against the respondents under Sections 5 and 7 of the Eviction Act would be allowed to be continued and the same shall be brought to a logical end as expeditiously as possible.

22. The land in question is a part of the Development Plan and therefore the matter requires urgent consideration. In any case the land in question being a part of the Development Plan cannot be left to the occupation of the respondents if they are held to be encroachers by passing an interim order. Therefore, in our considered opinion the proceedings to adjudicate upon and decide as to whether or not respondents are authorised or unauthorised occupants of the land in dispute should be completed and brought to an end. As to whether or not the respondents are encroachers would also be decided in the said proceeding. All other claims regarding entitlement of alternative plot or rehabilitation and whether or not such land is already allotted as rehabilitation package could be raised by the respondents only after the proceeding initiated under the Eviction Act is finalised and also depending on its outcome.

23. Six months time is granted to the competent authority

to complete proceedings initiated under Sections 5 and 7 of the Eviction Act, so that, the matter is disposed of as expeditiously as possible as the same is pending for a very long time. A

24. Therefore, the present appeal is allowed and the order passed by the High Court accordingly stands quashed. We leave the parties to bear their own costs. B

B.B.B.

Appeal allowed.