

AKHARA BRAHM BUTA, AMRITSAR

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v.

STATE OF PUNJAB AND ANOTHER

AUGUST 24, 1992

[LALIT MOHAN SHARMA AND DR. A.S. ANAND, JJ.]

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*Land Acquisition Act, 1894 :*

*Ss. 12, 18—Award—Compensation—Agreement between parties including State—Part of agreement given effect in award—State bound to modify the scheme in terms of agreement.*

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*Punjab Town Improvement Act, 1922 :*

*S.41—State Government—Power to sanction, reject or return scheme—Agreement by State to modify scheme under Land Acquisition Act—Implementation of—Whether discretionary on part of State.*

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In pursuance of the High Court's judgment based on a compromise to which the State Government was also a party, a portion of claimant's land acquired under the Land Acquisition Act, 1894 was to be excluded from the Scheme and for the remaining land the compensation was to be paid at the stipulated rate. Although the compensation was awarded in terms of the judgment, yet the land was not released. The claimant, being unsuccessful in two successive contempt petitions for implementation of the judgment, filed a writ petition which was dismissed by the High Court on the ground that the State was not a party to the compromise.

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On claimant's appeal by special leave to this Court, it was contended on behalf of the respondent State that in view of s. 41 of the Punjab Town Improvement Act, 1922, it was the discretion of the State Government to have agreed or not with the modification of the Scheme and it could not be forced to take a particular decision.

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Allowing the appeal, this Court,

HELD: 1.1. The State is bound to modify the scheme in view of its stand before the High Court in pursuance of which the judgment in the earlier writ petition was given. The collector while making the award relied

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A upon the agreement and fixed the compensation accordingly. Having taken advantage of the agreement in part and having repeatedly agreed to the terms of the compromise between the appellant and the Improvement Trust, the State Government cannot be permitted to back out of it. The conclusion of the High Court is clearly erroneous. [p.3 A-C]

B 2. Since houses have already been constructed on the acquired land and appellant is willing to accept only compensation for the entire land at the market rate as on 19.4.1983, no part of the land under acquisition shall be given back to the appellant, but the compensation for the entire area shall be paid at the market rate prevailing on 19.4.1983, the date on which the instant writ petition was dismissed by the High Court. The valuation will be fixed by the Civil Court in the same manner as it is done on reference under s. 18 of the Land Acquisition Act. [p.3 D-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10543 of 1983.

D From the Judgment and Order dated 19.4.1983 of the Punjab and Haryana High Court in Civil Writ Appeal No. 6300 of 1982.

Anant Vijay Palli, E.C. Agrawala, Atul Sharma, Ms. Rina Agarwal and Ms. Purnima Bhat for the Appellant.

E A.S. Sohal, G.K. Bansal, Sanjay Bansal and R.S. Sodhi for the Respondents.

The Judgment of the Court was delivered by

F SHARMA, J. In a writ petition filed by the appellant challenging the land acquisition proceeding an agreement was reached between the appellant and the Improvement Trust for excluding 12 Kanals of land from the Scheme and to pay the appellant the compensation for the remaining land at the rate of 2 rupees per square yard. The State was a party and joined the compromise through its counsel. The matter was disposed of by the judgment at pages 44 to 46. The Scheme, however, does not appear to have been formally modified and the appellant had to file an application for contempt, which was again disposed of by the order at page 48. The Improvement Trust, through its counsel gave an undertaking to release the land in presence of State counsel. Still the judgment was not implemented and the appellant had to file a second application for contempt which was dismissed at pages 54 to 62 by leaving the controversy open to be decided in an appropriate proceeding. In these cir-

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cumstances the present writ petition out of which this appeal arises, was filed by the appellant for implementation of the compromise. The High Court has dismissed the petition on the ground that the State was not a party to the agreement. A

2. The conclusion of the High Court is clearly erroneous. The learned counsel for the State has argued that in view of section 41 of the Punjab Town Improvement Act, 1922 it was the discretion of the State Government to have agreed with the modification of the Scheme or not and the State cannot be forced to take a particular decision. This argument is clearly erroneous as the State is bound to modify the Scheme in view of its stand before the High Court in pursuance of which the judgment in the earlier writ petition was given. It also appears that the Collector while making the Award relied upon the said agreement and fixed the compensation of the entire area at Rs. 2 per square yard only. Having taken advantage of the agreement in part and having repeatedly agreed to the terms of the compromise between the appellant and the Improvement Trust, the State Government cannot now be permitted to back out. B C D

3. The learned counsel for the Improvement Trust, Amritsar, has stated that houses have already been constructed on the acquired land in accordance with the Scheme and it will be against the public interest to disturb the position now. The counsel for the appellant, after taking instruction, indicated the willingness of the appellant to accept only compensation for the entire land to be calculated at the market rate prevailing on April 19, 1983. We have considered the relevant circumstances and we are of the view that the stand taken by the appellant is fair. Accordingly, we direct that no part of the land in question shall be given back to the appellant but the compensation for the entire area shall be paid at the market rate prevailing on April 19, 1983, the date on which the present writ petition was dismissed by the High Court. The valuation will be fixed by the Civil Court in the same manner as it is done on reference under section 18 of the land Acquisition Act. Let the High Court pass necessary orders sending the matter to the Civil Court for fixing the valuation without delay and let the Civil Court determine the valuation as expeditiously as may be possible. The appellant will be paid the compensation within a period of three months from the final determination of the valuation. E F G

4. The appeal is allowed in the above terms. There will be no order as to costs.

R.P.

Appeal allowed.