

PETITIONER:
AMRITSAR IMPROVEMENT TRUST ETC.

Vs.

RESPONDENT:
BALDEVA INDER SINGH AND ORS. ETC.

DATE OF JUDGMENT 17/11/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1972 AIR 182 1972 SCR (2) 386
1972 SCC (1) 165

ACT:
Punjab Town Improvement Act 1922--Scheme prepared by Amritsar Improvement Trust under ss. 24, 25 & 28 of Act and sanctioned by Government under s. 41--Scheme purporting to be 'development scheme' and 'housing accommodation scheme' including areas outside municipal limits--Scheme was invalid since it was an expansion scheme--Acceptance by Government did not make scheme valid--Being one and indivisible scheme must be struck down as a whole.

HEADNOTE:
The Amritsar Improvement Trust by its resolution dated April 19, 1962 framed a development-cum-housing accommodation scheme under ss. 24, 25 and 28 of the Punjab Town Improvement Act 1922. After notice was issued under s. 36 of the Act several objections were received. the objections were rejected by the Improvement Trust. Thereafter the scheme was submitted to the government and sanctioned by it under s. 41. The High Court in writ petitions filed before it challenging the scheme held that the Improvement Trust had no power to include in a 'development scheme' areas outside the municipality for the purpose of development. In appeals to this Court against the judgment of the High Court,

HELD : (i) The legislature has given specific names to the schemes to be prepared by the Improvement Trust. Hence when the Improvement Trust says that it has prepared 'a development scheme', it is not possible to hold that in fact it has prepared 'an expansion scheme'. The power conferred on the Improvement Trust is not a plenary power. It is a power that has to be exercised in accordance with the conditions laid down in the Act. If the Improvement Trust wanted to prepare 'an expansion scheme' it should have formed an opinion in the terms of s. 24(2) "that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in a locality adjacent thereto within the local area of such trust". [391 H]

From the resolutions passed by the improvement Trust it did not appear that it had formed any such opinion. Under these circumstances it was not possible to accept the contention of the appellants that as the resolutions of the Improvement

Trust refer to s. 24 it could be concluded that the scheme prepared was 'an expansion scheme'. The resolutions of the Improvement Trust did not merely refer to s. 24. They also said that the scheme prepared was 'a development scheme' cum 'housing scheme'. If these resolutions were read as a whole it was clear that the Improvement Trust purported to Act under its power under P. 24(1) which dealt with 'development scheme' and, s. 25 which dealt with 'housing accommodation scheme' and not under s. 24(2). [392 B-C]

(ii) it is a well established principle that if an authority has a valid power to do a particular act, the fact that it purported to do that act under a provision of law which did not confer power to do that act, would not invalidate that act. But that rule was inapplicable to the facts of this particular case. [393 B.]

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Before taking action under s. 24(2), the Improvement Trust had to form a particular opinion. The formation of that opinion was a condition precedent. Until the Improvement Trust forms that opinion it is incompetent to take action under that section. The Act has not conferred any blanket power on the Improvement Trust, to frame any scheme which it thought fit. That being so it was not possible to uphold the contention of the appellants that the impugned scheme could be traced to a valid power. [393 C-D]

L. Hazari Mal Kuthiala v. Income-tax Officer, Special Circle Ambala Cantt. and Anr., 41 I.T.R. 12 and Hukumchand Mills Ltd. v. State of Madhya Pradesh & Anr.. 52 I.T.R. 583, distinguished.

(iii) The schemes framed by the Improvement Trusts do not come into force automatically. They have to be sanctioned by the Government. Hence it is necessary for the government to know before sanctioning the scheme as to what the scheme is, so that it may examine whether that scheme is necessary or feasible. In the present case the government was informed that the scheme in question was 'a development-cum-housing accommodation scheme'. It approved the scheme. It cannot be said whether it would have sanctioned 'an expansion scheme'. The mere acceptance of the scheme by the Government did not alter the legal position. [393 B-F]

(iv) The scheme was one and indivisible. It was not possible to hold that it was partly valid and partly invalid. It had to stand or fall as a whole. [394 A-B]

The appeals must accordingly be dismissed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals No. 1418. 1419 and 1662 of 1968.

Appeals from the judgments and orders dated July 29, 1966 and January 3, 1966 of the Punjab High Court in Civil Writ Nos. 2052 and 2053 of 1965.

S. K. Mehta, K. L. Mehta and K. R. Nagaraja, for the appellant (in C.As.Nos. 1418 and 1419 of 1968).

V. C. Mahajan. and R. N. Sachthey, for the appellant (in C.A. No. 1662 of 1968).

Bishan Narain, O. P. Sharma, B. Datta, and J. B. Dadalwani. for respondents Nos. 1 to 5 (in C.As. Nos. 1418 and 1662 of 1968).

Frank Anthony and E. C. Agrawala, for respondent No. 1 (in C.A. No. 1419 of 1968).

The Judgment of the Court was delivered

Hegde, J. In these appeals by certificates, just one question of law arises for decision and that question is

whether the scheme prepared by the Amritsar Improvement Trust under ss. 24, 25 and 28 and sanctioned by the government under S. 41 of the Punjab Town Improvement Act 1922 (to be hereinafter called the Act)

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is an invalid scheme. The High Court of Punjab and Haryana has held in two writ petitions that the scheme in question is an invalid scheme and has consequently set aside that scheme. Aggrieved by those decisions, the Amritsar Improvement Trust as well as the State government of Punjab have come up in appeal.

The Amritsar Improvement Trust at its meeting held on April 19, 1962 resolved as follows:

"70.

Item

For consideration. Framing of a development-cum-housing accommodation scheme for the area bounded by Circular Road, Fatehgarh Churian Road, Guntala Drain, Bye-pass Road and Ajnala Road.

RESOLUTION

The Trust resolved to frame a development-cum-housing accommodation scheme for the area bounded by Circular Road, Fatehgarh Churian Road, Guntala Drain, Bye-pass Road and Ajnala Road u/s 24 and 25 read with section 28(2) of the Punjab Town Improvement Act, 1922. The Area will be developed as a Commercial-cum-residential area and an industrial colony will also be provided. Sites will be ear-marked for the construction of houses for services men and also for labour and harijan colonies. The scheme should now be notified under s. 36 of the Punjab Town Improvement Act, 1922, for inviting objections."

That resolution was amended by the Improvement Trust at its meeting held on May 1, 1962. The amendment reads thus

"92.

Item.

Reference Trust Resolution No. 70 dated 19-4-1962.

Dev. Scheme for the area bounded by Circular Road, Fatehgarh Churian Road, Guntala Drain, Bypass Road and Ajnala Road.

RESOLUTION

It is decided to refix the boundaries of the Development scheme as under:

"Circular Road, Fatehgarh Churian Road, Bye-pass Road and Ajnala Road."

Resolution No. 70 dated 19-4-1962 be and is amended accordingly."

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Thereafter on May 4, 1962, it issued the following notice under s. 36 of the Act.

"The Amritsar Improvement Trust, Amritsar.

Notice under section 36 of the Punjab Town Improvement Act, 1922.

Notice is hereby given that in accordance with Resolution No. 70 dated 19-4-1962, as amended by Resolution No. 92 dated 1-5-1962, passed by the Amritsar Improvement Trust, the Trust has framed a development-cum-Housing accommodation scheme for an area measuring approximately 860 acers, bounded by Circular Road, Fatehgarh Churian Road, By-pass Road and Ajnala Road, within the local area of the Amritsar Improvement Trust, under section 24

and 25 read with section 28(2) of the Punjab Town Improvement Act, 1922. The area will be developed as Commercial-cum-residential area and an industrial colony will also be provided. Sites will be ear-marked for the construction of colonies for service-men and also for labourers and Harijans. The boundaries of the scheme are as under:

NORTH.-Starting from the junction of Ajnala Road and Bye-pass Road along but excluding the land under Bye-pass Road, upto its junction with Fatehgarh Churian Road;

EAST.-Thence by Fatehgarh Churian Road but excluding the land under this Road, upto its junction with Circular Road;

SOUTH.-Thence, by Circular Road but excluding the land under the Circular Road, upto its junctions with Ajnala Road:

WEST.-Thence by Ajnala Road but excluding the land under the Ajnala Road, upto its junction with Bypass Road, the point of start.

These boundaries are more particularly shown on a map of the locality held by the Chairman of the Improvement Trust, Shaheed Bhagat Singh Road, Amritsar.

2. Details of the Scheme and a statement of the land to be acquired and the general map of the locality comprised in the scheme may be inspected at the office of the Trust, Shaheed Bhagat Singh Road, Amritsar, during office hours, on any working day.

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3. Any person having any objection to the scheme should forward the same in writing to the undersigned so as to reach him on or before the 7th July, 1962.

Dated, 4th May, 1962.

Sd/- Shashpal Singh,
Chairman,

Amritsar Improvement Trust, Amritsar.

In response to that notice. several interested persons submitted their objections. One of the objectors pleaded that the Improvement Trust had no competence to include in "a development scheme" areas outside the municipality. The Improvement Trust rejected all the objections and approved the prepared scheme. Thereafter the same was submitted to the government and the government sanctioned the same. There is no dispute that the impugned scheme includes both areas inside the Amritsar municipality as well as areas outside that municipality. It is also seen from the resolutions passed by the Improvement Trust as well as the notice issued by it under S. 36 of the, Act that the Improvement Trust purported to frame "a development" cum "housing accommodation scheme". It did not purport to frame "an expansion scheme".

The High Court has come to the conclusion that the Improvement Trust had no power to include in "a development scheme" areas outside the municipal limits for the purpose of development.

From the resolutions passed by the Improvement Trust, in particular the resolution passed by it on May 1, 1962, it is seen that the areas bounded by "Circular Road, Fatehgarh Churian Road, Bye-pass Road and Ajnala Road" were included for the purpose of development. It is conceded that the area included within those boundaries partly lies within the municipal limits and partly outside the municipal limits. It is urged on behalf of the writ petitioners that the areas outside the municipal limits can be taken over either under

"an expansion scheme" or under "a housing accommodation scheme". They cannot be taken over for "a development scheme". There is force in this contention.

Let us now read the relevant provisions. Section 24 of the Act provides

"(1) The trust may, for the purpose of development of any locality within the municipal limits contained in its local area, prepare "a development scheme", and

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(2) Such trust may, if it is of opinion that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto, within the local area of such trust prepare "an expansion scheme".

(3) "A development scheme" or "an expansion scheme" may provide for the lay-out of the locality to be developed, the purposes for which particular portions of such locality are to be utilised, the prescribed street alignment and the building line on each side of the streets proposed in such locality, the drainage of insanitary localities and such other details as may appear desirable."

Section 24(1) deals with preparation of "a development scheme". Section 24(2) deals with the preparation of "an expansion scheme". Section 24(3) prescribes what all things could be included in "a development scheme" or "an expansion scheme". Section 25 reads thus :

"If the trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants within its local area such trust may frame "a housing accommodation scheme" for the purpose aforesaid....."

(Proviso omitted).

Section 28(1) provides that the scheme under the Act may combine one or more types of scheme or any special features thereof.

It is clear from s. 24(1) that "a development scheme" cannot include areas outside the municipal limits. Therefore if a scheme includes both areas outside municipal limits and inside its limits, such a scheme cannot be prepared under s. 24(1). As seen earlier, from the resolutions of the Improvement Trust, it is clear that it purported to prepare "a development scheme" cum "housing accommodation scheme". It did not purport to prepare "expansion scheme". The legislature has given specific names to the various schemes to be prepared by the Improvement Trust. Hence when the Improvement Trust says that it has prepared "a development scheme", it is not possible to hold that in fact it has prepared "an expansion scheme." The power conferred on the Improvement Trust is not a plenary power. It is a power that has to be exercised in accordance with the conditions laid down in the Act. If the Improvement Trust desired to prepare "an expansion scheme"

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it should have formed an opinion "that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in a locality adjacent thereto within the local area of such trust".

From the resolutions passed by the Improvement Trust, it

does not appear that it had formed any such opinion. Under these circumstances, it is not possible to accept the contention of the appellants that as the resolutions of the Improvement Trust refer to S. 24, we may conclude that the scheme prepared is "an expansion scheme". The resolutions of the Improvement Trust do not merely refer to s. 24. They also say that scheme prepared is "a development scheme" cum "housing scheme". If these resolutions are read as a whole, it is clear that the Improvement Trust purported to act under its power under s. 24(1) and 25 and not under S. 24(2).

It was urged on behalf of the appellants that if the exercise of a power can be traced to a valid power, the fact that the power is purported to have been exercised under non-existing power, does not invalidate the exercise of that power. In that connection reliance was placed on the decisions of this Court in *L. Hazari Mal Kuthiala v. Income-tax Officer, Special Circle Ambala Cantt. and anr.* (1) and *Hukumchand Mills Ltd. v. State of Madhya Pradesh and anr.* (2).

The former case considered the validity of a transfer of an income-tax proceeding ordered by the Commissioner of Income-tax, Punjab. He purported to make the order in question under s. 5(5) and 7(A) of the Indian Income-tax Act, 1922 instead of making that order under S. 5(5) of the Patiala Income-tax Act. Under both those provisions, he had similar powers. This Court held that once it is established that the Commissioner had power to transfer the proceeding, the fact that he purported to exercise that power under a wrong provision of law would not vitiate his order. The exercise of that power would be referable to a jurisdiction which conferred validity upon it and not to a jurisdiction under which it would be nugatory.

In *Hukumchand Mills* case(2) this Court again ruled that it is well established that wrong reference to the power under which action was taken by the government would not per se vitiate that action if it could be justified under some other power under which the government could lawfully do that act : and therefore, even though the notification dated December 28, 1949, by which amendments were made to the Indore Industrial Tax Rules, 1927, was

(1) 41 I.T.R. 12.

(2) 52 I.T.R. 583.

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purported to be made under rule 17 of those rules, the amendments were valid because the government had power to make the amendments under s. 5(1) and (3) of Act I of 1948. Failure to refer to s. 5 did not invalidate the notification.

The legal principle enunciated in those decisions is a well established principle. If an authority has a valid power to do a particular act, the fact that it purported to do that act under a provision of law which did not confer power to do that act, would not invalidate the Act. But that rule is inapplicable to the facts of the present case.

Before taking action under s. 24(2), the Improvement Trust had to form a particular opinion. The formation of that opinion is a condition precedent. Until the Improvement Trust forms that opinion, it is incompetent to take action under that section. The Act has not conferred any blanket power on the Improvement Trust, to frame any scheme which it thought fit. That being so, it is not possible to uphold the contention of the appellants that the impugned scheme can be traced to a valid power.

There is yet another difficulty in the way of the

appellants. The schemes framed by Improvement Trusts do not come into force automatically. They have to be sanctioned by the government. The government may accept them. It may reject them. It may amend them and it may even send them back to the Improvement Trusts for reconsideration. Hence, it is necessary for the government to know before sanctioning the scheme as to what the scheme is, so that it may examine whether that scheme is necessary or feasible. Unless the government is informed as to the nature of the scheme, it would not be possible for the government to consider whether the scheme should be sanctioned or not. In the present case, the government was informed that the scheme in question was "a development cum housing accommodation scheme,. It has approved that scheme. We do not know whether it would have sanctioned "an expansion scheme".

Mr. V. C. Mahajan learned counsel for the State of Punjab contends that the government must be presumed to have known the true facts before sanctioning the scheme and the government has no objection for the scheme in question. Even if we accept that contention that does not alter the legal position. We should not mix up the facts of this case with the scope of the relevant provisions in the Act. We cannot confine our attention to the facts of a particular case. Our conclusion that the power conferred on the Improvement Trust is a limited power is reached on the basis of the nature of the power conferred and not on the basis of the facts

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of this case. The fact that the government is prepared to bless a particular scheme does not change the nature of the power.

The scheme before us is one and indivisible. It is not possible to hold that it is partly valid and partly invalid. It has to stand or fall as a whole.

For the reasons mentioned above, these appeals are dismissed with costs-hearing fee one set.

G.C. Appeals dismissed.

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