
(2011) 11 P&H CK 0139
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2718 of 2002

Avtar Singh and others

APPELLANT

Vs

The District Judge, Rupnagar and others

RESPONDENT

Date of Decision : 26-11-2011

Acts Referred:

Punjab Town Improvement Act, 1922 — Section 36, 42, 60

Citation : (2011) 11 P&H CK 0139

Hon'ble Judges : Rajiv Narain Raina, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar,J.—This order shall dispose of a bunch of petitions* as the common question of facts and law have been raised. The principal controversy centres around the issue whether the constitution of Tribunal u/s 60 of the Punjab Town Improvement Trust Act, 1922 (for brevity "the Act"), for the purposes of determining the compensation of land acquired under that Act would be proper if the President of the Tribunal alone has passed the award. It is conceded as a fact that the Tribunal is comprised of a President and two assessors for the purposes of assessing the amount of compensation in respect of the land acquired under the provisions of Sections 36 and 42 of the Act. The question was raised before Hon"ble the Supreme Court in the case of Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt) (Dead) and Another, Two Division Benches of this Court followed the aforesaid view in the case of Gurcharan Singh and others v. State of Punjab (CWP No. 11553 of 2001 decided on 07.04.2010) along with other petitions and took the view that the President alone was not competent to pass the award. Likewise, another Division Bench of this Court in the case of Jalandhar Improvement Trust, Jalandhar through its Administrator v. Improvement Trust Tribunal, Jalandhar 2010 (1) R.C.R. (Civil) 550 also took the same view.

2. In respect of the acquisition involved in the present case, this Court has already disposed of two petitions, namely, CWP No. 5132 of 2011 and CWP No.

5133 of 2011 decided on 14.10.2011 taking the same view. Therefore, the law appears to be well settled that the President alone in terms of a Tribunal constituted u/s 60 of the Act would not enjoy the jurisdiction to pass an award determining the amount of compensation.

3. For the purposes of this bunch, we are making reference to the facts taken from CWP No. 2718 of 2008 (Avtar Singh and others v. District Judge, Rupnagar and others). The impugned award in the instant petition is dated 09.11.2001 (P-1), which has been passed by the District Judge, Rupnagar. A perusal of the award would show that the award has been announced by the District Judge and there was no heading given by any of the other two Members. However, in para 7 of the award, the names of two assessors have been mentioned, namely, Sh. Jarnail Singh, General Assistant (Assessor) and Sh. Harmohan Singh Paul, Advocate (Assessor) and it has been observed that the matter was discussed with them and therefore, it has been urged that it may not be considered as adequate compliance of the provisions of Section 60 of the Act. It would be pertinent to notice the relevant part of Section 60 of the Act, which reads as under:

60. Constitution of tribunal.-(1) The tribunal shall consists of a president and two assessors.

(2) The president of the tribunal shall be a person qualified for appointment as a Judge of the High Court.

(3) The president of the tribunal and one of the assessors shall be appointed by the State Government and the other assessor shall be appointed by the municipal committee or, in default of appointment by the municipal committee within two months of their being required by the State Government to make such appointment, by the State Government:

(4) xx xx xx xx

(5) xx xx xx xx

(6) xx xx xx xx

4. A perusal of Section 60 of the Act would show that the Tribunal is to consist of a President and two assessors. The President of the Tribunal has to be a person qualified for appointment as Judge of the High Court and has to be appointed by the State Government along with one of the assessors. The other assessors may be appointed by the Municipal Committee and in default of appointment by the committee within a period of two months of the requirement of the State Government, the State Government may appoint even the second assessor. It is, thus, clear that three Members' Tribunal is contemplated. It would also be pertinent to mention that the procedure for pronouncing the award of the Tribunal is given in Section 65 of the Act, which reads as under:

65. Award to tribunal how to be

determined. (1) For the purpose of determining the award to be made by the tribunal under the Land Acquisition Act, 1894.

(a) If there is any disagreement as to the measurement of land, or to the amount of compensation or costs to be allowed, the opinion of the majority of the members of the tribunal shall prevail;

(b) notwithstanding anything contained in the foregoing clause, the decision on all questions of law and title and procedure shall rest solely with the president of the tribunal and such questions may be tried and decided by the president in the absence of assessors unless the president considers their presence necessary.

(c) The President of the Tribunal may record evidence on any matter in the absence of assessors unless he considers their presence necessary

(2) Every award of the tribunal, and every order made by the tribunal for the payment of money, shall be enforced by a Court of Small Causes, or if there be no such Court, by the Senior Sub-Judge within the local limits of whose jurisdiction it was made as if it were a decree of that Court.

5. A perusal of Section 65 of the Act would show that the award has to be made by the Tribunal under the Act. In case of any disagreement concerning the measurement of the land or to the amount of compensation or costs to be allowed, the opinion of the majority of the members is to prevail. However, on the question of law, title and procedure, the decision of the President of Tribunal shall be final. All such questions could be tried and decided by the Tribunal even in the absence of assessors unless the President considers their presence as necessary.

6. In the present case, the evidence has been recorded by the President of Tribunal. Even the arguments have been heard by the President and the award has been announced by him alone. The only reference made in para 7 is to the discussion made with the assessors. The matter came up before Hon''ble the Supreme Court in Parkash Wanti's case (supra) and in para 7, 8 and 9, the following observations have been made, which are fully applicable to the facts of the case.

7. It is also pertinent to notice that paras 11 and 12 of the aforesaid judgment put the controversy beyond all doubts, which read as under:

11. There is distinction between ministerial acts and statutory or quasi-judicial functions under the statute. When the statute requires that something should be done or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, the question often arise: What intention is to be attributed by inference to the legislature? It has been repeatedly said that no particular rule can be laid down in determining whether the command is to be considered as a mere direction or mandatory involving invalidating consequences in its disregard. It is fundamental that it depends on the scope and object of the enactment. Nullification is the natural and usual

consequence of disobedience, if the intention is of an imperative character. The question in the main is governed by considerations of the object and purpose of the Act; convenience and justice and the result that would ensue. General inconvenience or injustice to innocent persons or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment would be kept at the back of the mind. The scope and purpose of the statute under consideration must be regarded as an integral scheme. The general rule is that an absolute enactment must be obeyed or fulfilled exactly but it is sufficient if a directory enactment be obeyed or fulfilled substantially. When a public duty, as held before, is imposed and statute requires that it shall be performed in a certain manner or within a certain time or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements are not essential and imperative.

12. The question thus arises whether the function by the Tribunal as a body is mandatory or directory? The discharge of the duties under the Act are quasi-judicial. The power to determine compensation and other questions involves adjudication. The discharge of the functions by the Tribunal being quasi-judicial cannot be regarded as ministerial. When the statute directs the Tribunal consisting of three members to determine compensation etc., and designates the award as judgment and decree of a civil court, it cannot be held that the quasi-judicial functions of the Tribunal would be considered as directory, defeating the very purpose of the Act. Though inconvenience and delay may occasion in some cases by holding the provisions to be mandatory, but that is an inescapable consequence. In the light of the aforesaid discussion, it must be held that the adjudication by the three-member Tribunal is imperative and mandatory. Determination of the compensation in disregard thereof renders the adjudication void, invalid and inoperative.

(Emphasis added)

8. In view of the binding precedent of Hon''ble the Supreme Court in Parkash Wanti's case (supra) while interpreting Sections 60 and 65 of the Act as also the aforementioned Division Bench judgments of this Court, we are constraint to hold that the award did not satisfy the requirement of law. The President alone who has announced the award was not competent to do so.

9. Accordingly, the writ petitions succeed. The award is quashed. These matters are referred back to the Tribunal at Ropar. The parties through their counsel are directed to appear before the Tribunal on 20.12.2011.

10. A photocopy of this order be placed on the files of connected cases. V.