
(2015) 10 P&H CK 0160

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 1361 of 2005 and 16851 of 2013

Avtar Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Evidence Act, 1872 — Section 114

Land Acquisition Act, 1894 — Section 17, 4, 6

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2015) 10 P&H CK 0160

Hon'ble Judges : Hemant Gupta and Raj Rahul Garg, JJ.

Bench : Division Bench

Advocate : B.S. Billowria, Advocate, for the Appellant; Vivek Singla, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—In CWP No. 1361 of 2005, the petitioners namely Avtar Singh and Rajeshwar Singh, both sons of late Shri Balwant Singh, have sought a writ of mandamus for directing the respondents either to vacate the land of the petitioners in their possession or to pay the compensation thereof in terms of the provisions of the Land Acquisition Act, 1894 (for short "the Act").

2. The aforesaid relief is sought on account of the facts pleaded that the petitioners claim to be owner of land comprising in khasra Nos. 1, 2, 3, 4, 5, 7, 20, 22 & 23 situated in Village Daulatpur, Hadbast No. 331, Tehsil Pathankot, District Gurdaspur as per jamabandi for the year 2001-02.

3. The petitioners assert that the respondents constructed Western Base Workshop and Western Base Depot on the land measuring 149 Acres. Adjoining to the land acquired, there was land of the petitioners. However, the respondents have taken possession of some land of the petitioners without publishing any

notification and without paying any compensation. The petitioners have said to have approached the Sub Divisional Magistrate, Pathankot for demarcation of their land. Thus, the grievance of the petitioners is that the respondents are in possession of the land without any acquisition in accordance with law, as no notification to acquire land was never issued and that no Award has been made or compensation paid.

4. In the reply dated 25.01.2008 filed by Manashvi Kumar, IAS, Sub Divisional Magistrate -cum- Land Acquisition Collector, Pathankot, it has been averred that land measuring 92 Kanals situated in Village Daulatpur, Tehsil Pathankot was acquired for Western Base Depot and Base Workshop vide notification dated 01.11.1962 under Section 6 of the Act and that the petitioners have wrongly stated that their land was never acquired. A copy of the said notification has been appended with the reply as Annexure R-1. It is further averred that the record for payment could not be traced out being very old. However, reference was made to communication dated 21.03.1986 (Annexure R-2) regarding payment to the ex-landowners. It further reveals that payment of compensation has been made on 12.01.1965 for Rs. 2,03,186.72 and on 10.04.1964 for Rs. 2,33,483.56. Reference was also made to another acquisition of land i.e. 32.85 acres adjoining to the land earlier acquired. The relevant extract from the letter dated 21.03.1986 reads as under:

"Reference Punjab Govt. Gazette (Extra) notification (under Section 4 of the Land Acquisition Act, 1894), March 19, 1962 (Phalguna 28, 1883 SAKA) for 55 Acres of land for Western Base Workshop Pathankot and Punjab Govt. Gazette (extra) notification (under Section 6 of the Land Acquisition Act, 1894) of August 25, 1962 for 32 acres for Beacon Base Depot at Pathankot.

2. It is pointed out for your information that the payment to the land owners were made for the above mentioned area of land vide your Office No. 546-49/SDA/RK dated 12.01.1965 for Rs. 2,03,186.72 and No. 7322-28/SDA/RK, dated 10th April, 1964 for Rs. 2,33,483.56 respectively. The possession of land had been given to this Department during 1963-64, but the registration/mutation of land has not been done so far in favour of our department.

3. We have recently acquired some more land (32.85 acres) adjoining to the previous above mentioned land vide Punjab Govt. Gazette notification (extra) dated the 10th July, 1984, Department of Transport (Transport Branch) for Rs. 9,47,508.08 and the physical possession of the land was given to this Department on 21st June, 1985 vide Dakhal Kharaj report dated 21.06.1985.

4. We approached the revenue authorities to do the mutation of this land in favour of this newly acquired land, but they have told that till the mutation of old land acquired against above referred Gazette notifications is made, the mutation of the newly acquired land cannot be done.

5. In view of the above, you are requested to direct the revenue authorities (Tehsildar Pathankot) to do the needful in the matter and the mutation of the

whole land i.e. 55 acres plus 32 acres plus 32.85 acres may be done at the earliest to enable us to have proper records of land for producing to the audit authorities please.

6. Your early action in the matter will be highly appreciated."

5. In an additional reply dated 05.02.2015, it has been pointed out that land measuring 32 acres including the land in question was acquired vide notifications dated 01.11.1962 issued under Sections 4 & 6 read with Section 17 of the Act. Pursuant to the Award announced by the Land Acquisition Collector, the amount of compensation was deposited. After disbursing the amount, the Land Acquisition Collector vide its letters dated 10.04.1964 and 12.01.1965 informed the Central Government that payments of Rs. 2,33,483.56 and Rs. 2,03,186.72 respectively have been made to the land-owners. Reference is also made to the communication dated 21.03.1986, as reproduced above.

6. It is further pointed out that in terms of the departmental instructions dated 24.11.1986, the maximum time period provided for retaining the cash receipt register is 20 years before it can be destroyed. Since the record is old, the same could not be located in spite of the best efforts. The claim of the petitioners pertains to the year 1962, whereas the present petition has been filed after a period of 43 years.

7. When the writ petition came up for hearing before this Court on 18.08.2009, counsel for the petitioners raised an argument that some of the land of the petitioners has been acquired, whilst some land of the petitioners has never been acquired and that the petitioners have not been paid any compensation for any land whatsoever. In view of the said contention, the petitioners were granted time to file an affidavit, whereas the respondents are directed to ensure the availability of the entire original record relating to this controversy on the next date of hearing. It is, thereafter, a communication dated 27.10.2009 from the Sub Divisional Magistrate, Pathankot to the Additional Advocate General, Punjab was placed on record as Mark "A". The relevant extract from the said communication reads as under:

"Kindly refer to your D.O. letter No. 4910 dated 26.08.2009 on the subject noted above.

It is submitted that as per the revenue record, the total area of khasra No. 2 is 54 kanals and 01 marla and as per the notification No. 1(42)-5762/46504 dated 01 Nov., 1962 an area measuring 47 kanals & 14 marlas of this khasra number has been acquired. The total area of 54 kanals 01 marla under the physical possession of the Army (GREF WORKSHOP). Thus, an area measuring 6 kanals 7 marlas is under the un-authorized possession of the Army, as per site report of Revenue Staff and the revenue record.

Similarly, the total area of khasra No. 23 (old No. 9 min.) is 4 kanals 10 marlas and the total area is under the possession of the Army (GREF WORKSHOP). But

as per the Notification only an area measuring 2 kanals 19 marlas has been acquired. Thus, an area measuring 1-11 marlas of this khasra No. 23 is under the un-authorized occupation of the Army, as per the site report of revenue staff and revenue record."

8. Thereafter, vide order dated 26.04.2010, this Court noticed that the land measuring 10 kanals 7 marlas is under the unauthorized occupation of Western Base Workshop (GREF) since 1962. The said order reads as under:

"In pursuance of order dated 29.03.2010, the Sub Divisional Magistrate, Pathankot has sent a communication to Mr. Suvir Sehgal, learned Additional Advocate General, Punjab, intimating that the demarcation of the acquired land was done by the Revenue Staff on 05.04.2010 in the presence of the petitioners and the representative of respondent No. 4 namely, the Commander, Western Base Workshop (GREF), Pathankot. According to the communication, the land measuring 10 K 07 M is under the unauthorized occupation of Western Base Workshop (GREF). A copy of the said communication has been handed over to Mr. Vibhor Bansal, Advocate, appearing for respondent No. 4, who seeks time to obtain instructions. According to averments made in the petition, the land is under unauthorized occupation of respondent No. 4 since 1962 and neither the land is being acquired nor any user charges are being paid to the petitioners. The aforesaid course adopted by respondent No. 4 is wholly unwarranted and calls for an immediate remedy. Accordingly, we grant two weeks" time to Mr. Bansal to seek instructions failing which we will issue directions as per law.

List again on 14.05.2010. Be shown in the urgent list.

A copy of this order be given dasti to the counsel for the respondent Nos. 1 to 4 under the signatures of Bench Secretary."

9. It is, thereafter, this Court vide order dated 14.10.2010 directed the respondents to complete acquisition of land of the petitioners i.e. 10 Kanals 7 Marlas within three weeks. The relevant extract from the said order reads as under:

"In the affidavit, the petitioners have stated that even for the land, which was acquired (other than 10 kanals of land, which was not acquired), compensation has not been paid to them. Be that as it may, it is not in dispute that about 10 kanals of land of the petitioners was not acquired, however, the same was put to use by the authorities since from the year 1962. Taking note of above said situation, it was felt desirable by this Court that to identify land of the petitioners, demarcation be done at the spot. In response thereto, demarcation was done and it was found that 10 kanals 7 marla of land of the petitioners is under unauthorized occupation of the Western Base Workshop (GREF).

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Land of the petitioners measuring 10 kanals 7 marla is in unauthorized occupation of the respondents since from the year 1962. They are running from

pillar to post to get justice, but the same has been denied to them on one pretext or the other. On the last date of hearing, we directed Mr. Bansal to bring at least amount to be paid towards use and occupation charges in the shape of a demand draft. Nothing has been done except putting up excuses as has been done in the past.

Counsel for the petitioners states that the petitioners have no objection to the acquisition of their land. They only want compensation for the same and also compensation for the use and occupation of their land by the authorities.

Under the circumstances, we direct the respondents to complete acquisition of land of the petitioners, may be by invoking emergency provisions of the Land Acquisition Act, 1894 (in short, the Act) within three weeks. Compensation amount alongwith amount towards use and occupation charges be brought in Court, in the shape of demand draft on the next date of hearing."

10. Though such directions were issued for acquisition of land, but the land was actually acquired vide notification dated 18.04.2013 issued under Section 4 of the Act followed by notification dated 22.04.2013 issued under Section 6 of the Act. The Award was announced by the Land Acquisition Collector on 01.07.2013. Such acquisition proceedings are challenged by the Union of India in CWP No. 16851 of 2013, which is taken up for hearing together with the present writ petition.

11. On 04.07.2013, this Court noticed that the Land Acquisition Collector has determined the compensation of Rs. 1,96,98,637/-. The compensation amount of Rs. 1,20,41,383/- was ordered to be disbursed to the land-owners without prejudice to their legal rights while observing that the amount of occupation charges need to be finally determined by this Court. Thereafter, on 05.08.2013, a sum of Rs. 39,72,029/- was directed to be deposited in short term FDR towards occupation charges till the issue regarding competence of the Land Acquisition Collector to determine those charges is decided by this Court. On 23.09.2013, this Court was informed that the amount of Rs. 39,72,029/- has been deposited in the shape of FDRs.

12. It may be noticed that the respondents-Union of India filed Special Leave Petition bearing No. 31814-815 of 2010 before the Hon"ble Supreme Court challenging the interim orders passed by this Court from time to time, but such Special Leave Petition was dismissed on 12.12.2012 with a direction to the Union of India to initiate proceedings for the acquisition of the land of the present petitioners and complete the same within a period of 4 months, which period was later extended by another two months on 08.05.2013. It is, thereafter, the proceedings of acquisition in respect of land measuring 10 kanals 7 marlas stand concluded.

13. Thus, the acquisition of land measuring 10 kanal 7 marla stands concluded in terms of the directions issued by this Court on 14.10.2010.

14. However, now the petitioners have raised a grievance that the acquisition proceedings in respect of 85 kanals of land stand lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "2013 Act").

15. We have heard learned counsel for the parties and find no merit in the writ petition. It transpires from the affidavits filed that notifications under Section 4 and 6 of the Act for Western Base Workshop, Pathankot in respect of 55 Acres of land were issued on 19.03.1962. Later, the notifications under Section 4 & 6 of the Act were issued on 01.11.1962 in respect of 32 Acres of land for Beacon Base Depot, Pathankot, which included 109 Kanals 01 Marlas of land situated in Dolatpur, Hadbast No. 331 including land comprising in Khasra No. 1 (37-01); 2Min (47-14); 3Min (06-17); 6Min(12-16); and 7Min(0-08) owned by the predecessors-in-interest of the petitioners.

16. An application bearing CM No. 2311 of 2015 was filed on behalf of respondent Nos. 1 to 4 on 18.02.2015 to produce on record a legal notice served on behalf of the land-owners to the Union of India. The averments made in such application are as under:

"2. That while continuing the efforts of searching the old records the answering respondents have found a notice dated 14.10.1988 sent to Union of India under Section 80 CPC by Balwant Singh S/o. Kesho Dass (father of petitioners) through his counsel Ashok Soodan, Advocate in which it is clearly mentioned that Balwant Singh has received the compensation for 100 Kanal 10 Marlas of his land, which was acquired by the Union of India. The specific khasra numbers which have been acquired has also been mentioned in the said notice. The photocopy of the notice is annexed as Annexure R-9.

3. That after finding the copy of the notice annexure R-9 Mr. Gautam Naug, Executive Engineer, Mr. Kiran Kumar, Admn. Officer, Mr. Gautam Singh, Asstt. Admn. Officer and P.S. Pathania, Asstt. Admn. Officer, all officers of GREF visited the office of Mr. Ashok Soodan, Advocate on 15.02.2015 and showed him the copy of the notice, who on seeing the notice, accepted that the said notice had been sent by him on the instructions of his client Balwant Singh on the basis of the facts disclosed by him and the same was typed on his office type writer. This document falsifies the claim of the petitioners and is very important and necessary for the just decision of this case and the same may kindly be allowed to be placed on record."

17. The legal notice (Annexure R-9) Dated: 14.10.1988, as mentioned in para 2 of the application, reads as under:

"Sub: Notice under Section 80 CPC.

Sir(s),

I have been instructed by my client Sh. Balwant Singh son of Kesho Dass resident of Vill. Dhakki, Tehsil Pathankot to serve you with the following notice

for your immediate action and due compliance.

1. That my client is/was owner of the land in village Daulatpur, Tehsil Pathankot for the land measuring 115 kanals 13 marlas comprising of Khasra No. 1, measuring (37-1), Khasra No. 2(54-3), Khasra No. 6 min. (18-13), Khasra No. 9/1(5-16), situated in the revenue estate of Vill. Daulatpur, Tehsil Pathankot HB No. 331.

2. That the land measuring 100 kanals 100 marlas was acquired out of the total land 115 kanals 13 marlas and the remaining land measuring 15 kanals 03 marlas was left unacquired by the Government while the acquisition of the land in Vill. Daulatpur. The details of the total land and land acquired is shown as under:

3. That the said land was acquired for locating the military Baba Workshop (base depot) at Pathankot. That the compensation whatsoever for the land acquired was received by my client for the land measuring 100 Kanals 10 Marlas. However, no compensation was paid by the Govt. for the remaining land 16-03 of my client, which was left unacquired.

4. That my client is owner of the land measuring 15 Kanals 3 Marlas of which the possession of you the noticee No. 2 is illegal, unauthorized without any legal right.

5. That my client has requested you a number of time and a various representations have been made in this regard that either the possession of the land measuring 15 Kanals 3 marlas be handed over to my client or to acquire the land by separate notification, but you have failed to do anything in this regard. Hence this notice.

6. I, therefore, call upon you through this notice to handover the possession of the land measuring 15 kanals 3 marlas to my client forthwith within a statutory period of 2 months from the receipt of this notice, failing which I have got definite instructions to move the competent court of jurisdiction at Pathankot for the possession of the land and further that my client will also claim the wrongful use and occupation of the land occupied by you. You would further be liable to pay all the costs litigation expenses whatsoever incurred therein by my client.

Hence please take notice.

A copy of this notice is retained in my office for future reference and records."

18. The said application was allowed vide order dated 26.02.2015 subject to all just exceptions and the notice was taken on record as Annexure R-9. However, the petitioners have not filed any counter-affidavit controverting the assertions raised by the respondents in the said application for placing on record document Annexure R-9. It may be stated that another application bearing CM No. 3705-CWP of 2015 was filed by the respondents to implead Mr. Ashok Soodan, Advocate, who has served the said notice, as respondent No. 6. However, the

said application was dismissed on 21.05.2015.

19. Therefore, the question, which is required to be examined is; whether compensation of the land, which was subject matter of acquisition vide notifications dated 01.11.1962 has been paid or not?

20. It was in pursuance of an order passed by this Court on 18.08.2009 on the basis of an assertion of the petitioners that compensation has not been paid for any land whatsoever, an affidavit has been filed by the petitioner Avtar Singh on 21.08.2009. The affidavit dated 21.08.2009 reads as under:

"1. That the deponent and his co-sharer has not received any compensation from the respondents regarding the land acquired in Khasra Nos. 1, 2 min. The land was acquired in the year 1962 and that time the father of the deponent was owner in possession of the land acquired. The father of the deponent died in the year 2000 and even then he was also not paid the compensation of the land acquired vide Annexure R-1.

2. That in khasra No. 2 min the total land acquired is shown as 47 kanal 14 marlas, whereas the total khasra number is measuring 54 kanals 1 marla is in possession of the respondent department. Meaning thereby, 6 kanal and 7 marlas is in possession of the respondent without any notification under Section 4 of the Land Acquisition Act. Similarly, khasra No. 23 measuring 4 kanal 10 marlas is in possession of the respondent department for which no notification has been issued. The total area for which no notification has been issued comes to 10 kanal and 17 marlas.

3. That the deponent and his father have not received any compensation for the land which has been shown to be acquired by the notification Annexure R-1. The father of the deponent during his life time told the deponent that even he did not received any compensation for the land shown to be acquired by the notification Annexure R-1.

4. That the respondents in the reply have shown to have made the payment of compensation to the land owners whereas the same pertains to the land acquired for other villages and there is no record shown by the respondents vide which the said payment has been made to the deponent or his predecessor."

21. After the report of the Sub Divisional Magistrate, Pathankot dated 27.10.2009 (Mark "A"), when the respondents were found in unauthorized possession of 10 Kanal 7 Marla of land, this Court directed acquisition of land measuring 10 kanal 7 marla only, when the aforesaid affidavit was filed. Thereafter, all proceedings before this Court were taken to undo the wrong done to the petitioners regarding the said land. The petitioners have thereafter made no grievance in respect of remaining land measuring 85 Kanal, as sought to be raised now after the conclusion of all the proceedings in respect of acquisition of 10 Kanal 7 Marla of land.

22. Still further, a perusal of the communication dated 21.03.1986 (Annexure

R-2) shows that 55 acres of land for Western Base Workshop Pathankot was acquired vide notification dated 19.03.1962, whereas 32 acres of land for Beacon Base Depot Pathankot was acquired vide notification dated 25.08.1962. It appears that date of notification i.e. 25.08.1962 in respect of 32 acres of land for Beacon Base Depot is wrongly mentioned in the communication dated 21.3.1986. In fact, it was 01.11.1962, when the notifications were published under Sections 4 & 6 of the Act in respect of land measuring 32 Acres including the land of the petitioners. A perusal of the compilation of Gazette notifications from the High Court Library shows that there is no notification published on 25.08.1962. The land measuring 55 acres was acquired vide notifications under Section 4 & 6 of the Act published on 19.03.1962, whereas another 32 acres of land was acquired vide notifications published under Sections 4 & 6 of the Act on 01.11.1962. Therefore, the compensation of Rs. 2,03,186.72 and Rs. 2,33,483.56 pertain to the land measuring 55 acres and 32 acres respectively. Another land measuring 32.85 acres was acquired on 10.07.1984. Therefore, the respondents claimed to have acquired 55 Acres + 32 Acres + 32.85 Acres of land.

23. Still further, a perusal of legal notice (Annexure R-9) shows that the predecessor-in-interest of the petitioners has sought possession of 15 kanal 3 marla of land for which no compensation was paid. It was specifically mentioned that compensation for the land measuring 100 kanal 10 marla was received.

24. A perusal of affidavit dated 21.08.2009, as reproduced above, shows that the petitioners were aware of the fact that the land was acquired in the year 1962, as their father had told them that compensation has not been paid. The father died in the year 2000, but still in the writ petition filed in the year 2005, the petitioners have asserted that the land was not acquired. It was a misleading statement before the Court. We find that the petitioners have concealed material facts and mis-stated the facts. The stand taken that the father of the petitioners told that even he did not received the compensation cannot be believed, as it is based upon hearsay. If the compensation was not paid, which fact was in the knowledge of the petitioners before the year 2000, when the father of the petitioners was available, there is no reason as to why the petitioners have not disclosed such fact in the writ petition filed in the year 2005. The averments made in the affidavit are contradicted by the legal notice served on behalf of the predecessor-in-interest of the petitioners categorically accepting receipt of payment of compensation for the land measuring 100 Kanal 10 Marla, when the possession of 15 Kanal 3 Marla of land was sought, which was in possession of the respondents without acquisition and payment of compensation.

25. Admittedly, the land is in possession of the respondents since the year 1962. The petitioners approached this Court in the year 2005 i.e. after more than 40 years. The petitioners did not raise any grievance that the compensation was not paid. If the possession is taken without any payment of compensation, the land-owners will not sit silently and allow the land to be utilized by the State. One can understand that there can be some misconception about the extent of the land,

which is subject matter of acquisition, but to say that there was no acquisition and no compensation has been paid, cannot be believed. If the father of the petitioners has not disputed acquisition for more 40 years, the presumption would be of payment of compensation. The long silence, when possession of large tract of the land of the father of the petitioners was taken, raises presumption of legal acquisition as official acts carry presumption of regularly performed in terms of Section 114 of the Indian Evidence Act. The petitioners have sought to raise the plea of non-payment of compensation, when with the lapse of time the records may not be available, which are destroyed after 20 years in terms of circular dated 02.03.1996. The stand of the petitioners in respect of 85 kanals of land that the compensation was not paid is a made up story and cannot be believed and hence rejected.

26. Thus, we do not find any merit in the present writ petition regarding remaining land of the petitioners.

CWP No. 16851 of 2013

27. The present writ petition has been filed by the Union of India challenging notifications dated 18.04.2013 and 22.04.2013 as well as Award dated 01.07.2013 for the reason that in pursuance of the earlier notifications published under Sections 4 & 6 of the Act on 11.11.2010 and 19.11.2010 respectively, the land stands validly acquired and compensation of Rs. 1,02,86,853/- determined. It is pointed out that since there was an order of stay passed by the Hon'ble Supreme Court on 14.02.2011 in Special Leave Petition No. 31814-815 of 2010, the draft Award prepared by the Land Acquisition Collector was not finally announced. The same was announced on 04.04.2013 (Annexure P-13) after the said Special Leave Petition was decided on 12.12.2012. The fact that only the Award needs to be announced could not be brought to the notice of the Hon'ble Supreme Court, therefore, the acquisition proceedings initiated again are not tenable.

28. We do not find any merit in the argument raised. The acquisition proceedings initiated vide notifications under Sections 4 & 6 of the Act published in the year 2010 were not finalized, as the award was not announced within the time prescribed. The Land Acquisition Collector had determined the compensation of Rs. 1,96,98,637/- including the occupation charges in its Award dated 04.04.2013. Thus, the compensation amount of Rs. 1,20,41,383/- was ordered to be disbursed to the land-owners without prejudice to their legal rights on 04.07.2013. It is, thereafter, the fresh acquisition proceedings have been initiated and concluded, whereby compensation of Rs. 2,36,70,666/- has been determined including Rs. 1,96,98,637/- towards value of the land and Rs. 39,72,029/- as occupation charges. Since the land has been acquired pursuant to the orders of the Court, we do not find any illegality in the acquisition proceedings, which may entitled the Government of India to challenge the same.

29. Consequently, the present writ petition is also dismissed.