

(2002) 10 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17539 of 2001

Balwinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 29-10-2002

Acts Referred:

Citation : (2003) 2 ICC 292 : (2003) 2 LJR 779 : (2003) 2 LLR 620 : (2002) 2 PLJ 541 : (2003) 1 RCR(Civil) 481

Hon'ble Judges : V.K.Bali, J and Satish Kumar Mittal, J

Advocate : Mr. Premjit Kalia, Advocate for Balwinder Singh, Advocate. Mr. Ashok Aggarwal, Addl. A.G. Punjab. For the Union of India, Mr. Anil Rathee, Advocate., Advocates for appearing Parties

Judgement

Satish Kumar Mittal, J.—This order will dispose of two writ petitions bearing CWP No. 17539 of 2001 and 18320 of 2001, titled as Balwinder Singh v. State of Punjab and others, 2003(1) R.C.R.(Civil) 481 and Union of India v. State of Punjab and others, respectively, as the same are arising from the common order/award dated 30.5.2000, passed by the Land Acquisition Collector cum Sub Divisional Magistrate, Patti, District Amritsar.

2. The brief facts of the case are that a big chunk of land was acquired by the Union of India for establishing the New Border Security Force Battalion Head Quarters at Amarkot, Tehsil Patti, District Amritsar vide notification dated 23.2.1989 issued under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act). The declaration under Section 6 of the Act regarding the said acquisition was issued on 29.8.1989. In the said acquisition, some of the land of Balwinder Singh petitioner of CWP No. 17539 of 2001 was acquired. Though the other claimants filed reference under Section 18 of the Act, in which the amount of compensation was enhanced by the judgment dated 15.5.1995, passed by the Additional District Judge, Amritsar, but Balwinder Singh did not seek any reference under Section 18 of the Act. He and his brother Sukhvinder Singh filed an application under Section 28A of the Act (Annexure P1) for

redetermination of the amount of compensation payable to them on the basis of the judgment dated 15.5.1995, passed by the Additional District Judge, Amritsar. The said application was filed on 4.9.1995, which was decided on 30.5.2000 (Annexure P3) and they were also awarded the enhanced compensation on the basis of the judgment dated 15.5.1995.

3. Against the aforesaid order dated 30.5.2000, the aforesaid two writ petitions have been filed. Petitioner Balwinder Singh filed CWP No. 17539 of 2001 with a prayer for issuance of a writ in the nature of mandamus directing the respondents Union of India as well as the Land Acquisition Collector to release and disburse the enhanced amount of compensation to the petitioner as per the award dated 30.5.2000 (Annexure P3), as in spite of the repeated requests, the Land Acquisition Collector is not releasing the enhanced amount of compensation. The second writ petition bearing CWP No. 18320 of 2001 has been filed by the Union of India seeking issuance of a writ in the nature of certiorari for quashing the orders dated 5.5.2000, 12.5.2000, 30.5.2000 and 11.4.2001, passed by the Land Acquisition Collector cum Sub Divisional Magistrate, Patti, inter alia on the grounds that the application of Balwinder Singh and his brother Sukhvinder Singh under Section 28A of the Act was earlier rejected vide order dated 4.9.1995 and subsequently, the Land Acquisition Collector has illegally reviewed the said order and passed the order dated 30.5.2000. It is also submitted that the said application under Section 28A of the Act was filed after the expiry of the limitation of three months as provided under the Act and in no circumstance, it could have been allowed being barred by limitation.

4. It has been submitted by learned counsel for the Union of India that the learned Additional District Judge passed the award and enhanced the compensation on the reference application of Balwinder Singh and his brother Sukhvinder Singh, which was filed by them on 4.9.1995 for redetermination of the compensation on the basis of the aforesaid judgment. The said application was, however, rejected on the grounds of limitation by the Land Acquisition Collector on 4.9.1995 itself. No appeal or revision was preferred against that order. Balwinder Singh (petitioner in CWP No. 17539 of 2001) without challenging the said order of the Land Acquisition Collector and without disclosing this fact, filed CWP No. 4029 of 1999 in this Court, which was disposed of vide order dated 23.2.2000 directing the respondent Land Acquisition Collector to take a decision in the matter within a period of six months from the date of receipt of the certified copy of the order. In the said writ petition, the Union of India was deliberately not impleaded as a party, though the land was acquired for its benefit. After passing of the afore mentioned order dated 23.2.2000, the Land Acquisition Collector, Patti, after getting the proposal from the Deputy Commissioner, Amritsar, passed an order dated 12.5.2000 and enhanced the amount of compensation in terms of the award dated 15.5.1995. The Union of India came to know about the order of enhancement of compensation only when they received the notice dated 30.5.2000. They immediately filed an application

before the Additional District Judge, for reconsidering the matter, but the said application was rejected vide order dated 11.4.2001. Thereafter, the Union of India filed CWP No. 18320 of 2001, in which the orders dated 5.5.2000, 12.5.2000, 30.5.2000 and 11.4.21001 have been challenged.

5. Learned counsel for the Union of India has made two fold arguments. Firstly, he contends that once the application under Section 28A of the Act filed by Balwinder Singh and his brother Sukhvinder Singh was dismissed on 4.9.1995 on the ground of limitation, the Land Acquisition Collector was absolutely having no jurisdiction to recall his order and reconsider the matter. The direction issued by this Court vide order dated 23.2.2000 in CWP No. 4029 of filed by Balwinder Singh does not empower the Land Acquisition Collector to reconsider the matter, Secondly, he contends that as the award is dated 15.5.1995, therefore, in no circumstance the application under Section 28A of the Act filed by Balwinder Singh and his brother Sukhvinder Singh on 4.9.1995 i.e. beyond the period of 90 days can be said to be within limitation.

6. Learned counsel for Balwinder Singh could not dispute the factual position in the present case. He submitted that the certified copy of the award dated 15.5.1995 was applied on 19.7.1995 and the same was delivered on 5.8.1995. If the said period is excluded, then the application filed by Balwinder Singh and Sukhvinder Singh was within limitation.

7. The aforesaid contention of the learned counsel for Balwinder Singh is not acceptable at all. Even if, for the sake of arguments, it is accepted that for filing an application under Section 28A of the Act, a certified copy of the award passed by the Additional District Judge is required and even if the petitioner is granted the benefit of excluding the period spent by him in obtaining the certified copy of the said award as per Article 12 of the Limitation Act, 1963, even then the application filed by Balwinder Singh and his brother Sukhvinder Singh under Section 28A of the Act was barred by limitation. They applied for certified copy of the award dated 15.5.1995 on 19.7.1995 and the certified copy was prepared on 22.7.1995. Therefore, only the time between 19.7.1995 and 22.7.1995 can be excluded. If that period is excluded, even then the application filed by them is barred by limitation. Even otherwise, when their application was earlier rejected by the Land Acquisition Collector on 4.9.1995, he was having no jurisdiction to recall that order and pass a fresh order enhancing the compensation in terms of the award dated 15.5.1995. This Court, by its order dated 23.2.2000 did not empower or direct the Land Acquisition Collector to recall his earlier order. By this order, the Land Acquisition Collector was only directed to decide the application under Section 28A of the Act. The Land Acquisition Collector has committed gross illegality in the present case while recalling his earlier order and passing the fresh order on the pretext that he was so permitted by this Court. In no circumstances, the application filed by Balwinder Singh and his brother Sukhvinder Singh under Section 28A of the Act could be allowed as the same was barred by limitation.

In view of the aforesaid discussion, CWP No. 17539 of 2001 filed by Palwinder Singh is dismissed and CWP No. 18320 of 2001 filed by the Union of India is allowed and the orders dated 5.5.2000, 12.5.2000, 30.5.2000 and 11.4.2001, passed by the Land Acquisition Collector are hereby set aside. No order as to costs.