
(2002) 10 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9632 of 2001

Convertaid Engineers Pvt. Ltd. and Others	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision : 29-10-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 31, 34, 4

Citation : (2003) 133 PLR 634 : (2003) 1 RCR(Civil) 427

Hon'ble Judges : V.K. Bali, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Rajiv Atma Ram and Hemraj Mittal, for the Appellant; Sanjay Vashish, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Fifty three petitioners have challenged the Notification dated 18.8.1987 u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act), Annexure P.13, Notification dated 12.8.1988 u/s 6 of the Act, Annexure P. 14 and the award dated 11.8.1990, Annexure P. 15 in the present writ petition filed on 9.7.2001.

2. The brief facts necessary for the decision of the present writ petition are that one M/s Raccman Auto Private Ltd. was owner of the land measuring 133 Kanals ! 9 Marias situated within the revenue estate of village Mujesar, Hadbast No. 9 including land measuring 40 Kanals 3 Marias which was purchased by the company in the year 1963-64, Although there were earlier notifications for acquisition of the land but such notifications are not relevant for determination of the controversy in the present case. The acquisition under challenge was initiated by virtue of a notification dated 18.8.1987 u/s 4 of the Act in respect of the land measuring 5.02 acres i.e. the land which was purchased by M/s Racman Auto Private Ltd. in the year 1963-64. After the objections were considered, notification u/s 6 was issued on 12.8.1988. Such notifications u/s 4 and 6 were challenged by the petitioners and some other persons by v/ay of the writ petition

No. 7766 of 1989 and the said writ petition was dismissed after reply and replication was filed on 9.11.1989. Subsequent to the dismissal of the writ petition, the Land Acquisition Collector announced the award on 11.8.1990. It was recited in the award that the possession of the land acquired vide this award will be taken over immediately after offering the compensation which has duly been offered today.

3. The petitioners averred that no award was made in respect of the superstructure. However, it was further stated that neither the compensation assessed in the award Annexure P. 15 was paid nor the same has been deposited in court nor notice as contemplated by Section 12 of the Act has been issued. It was further stated that the possession of the land has not been taken by the State and the petitioners continue to be in possession thereof. However, in subsequent paragraph the petitioners stated to the following effect:

"20. That it is reiterated that in pursuance of the award Annexure P. 15 neither the compensation amount was disbursed to the petitioner, nor the same has been deposited in court, nor any notices u/s 12 as required have been received by any of the petitioners nor any supplementary award with regard to the buildings etc. has been announced till today."

4. The petitioners challenged the acquisition proceedings after proclamation was made in the locality by the chowkidar that the possession of the land would be taken on 26.7.2001.

5. In pursuance of the notice issued, the State filed its reply and submitted that the writ petition is liable to be dismissed on account of delay and laches. It was mentioned that the amount of compensation after the announcement of the award is lying in the general account of the respondents and can be disbursed even in the court itself. It was further mentioned that the supplementary award could not be made as the officers were not allowed to enter for making the assessment. The State has further stated that the amount of compensation pertaining to the acquired land has already been disbursed to the concerned persons but so far as the claim with regard to the buildings etc. is concerned it could not be given because the officials were not permitted to enter the building to assess the compensation. The Haryana Urban Development Authority (hereinafter referred to as HUDA), respondent No. 3 has stated that the land vested in HUDA from the date of the award since the compensation was offered and in terms of the stipulation in the award itself the land vested with the HUDA. It relied upon Rapat No. 73 dated 11.8.1990 to contend that none else except HUDA has any right, title or interest in the said land.

6. Mr. Rajiv Atma Ram, learned counsel Senior Counsel for the petitioners has contended that the amount of compensation has not been paid or deposited to the land-owners in terms of the award of the Land Acquisition Collector and therefore, the acquisition proceedings stands vitiated and now after such a long period, the respondents cannot take steps to dispossess the petitioners in

pursuance of the award given in the year 1990. On the other hand learned State counsel submitted that the land stood vested in the State Government free from all encumbrances on the announcement of the award and when symbolic possession of the land was taken on announcing the award on 11.8.1990. Therefore, the petitioners have no right, title or interest in the land acquired and are in fact, unauthorised occupants of the same. Learned counsel for the respondents relied upon a Full Bench Judgment of this Court reported as *Narinjan Singh and Another Vs. State of Punjab and Another*, to contend that a writ petition challenging the acquisition proceedings after announcement of the award is not maintainable.

7. As mentioned above, the writ petition filed by the petitioners and some other persons was dismissed by this Court on 9.11.1989. The notification under Sections 4 and 6 were published before the said date whereas the award has been announced subsequently. It has been held by the Full Bench of this Court in *Narinjan Singh and Another Vs. State of Punjab and Another*, that once the Collector makes its award u/s 11 of the Act, two consequences follow i.e. the acquired land absolutely vests in the Government and such vesting is free from all encumbrances. In other words with the taking of possession by the Government, the title of the land acquired completely passes to the State

8. In *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, , General Manager, Telecommunication and *Another Vs. Dr Madan Mohan Pradhan and Others*, , State of Haryana and *others Vs. Dewan Singh and others*, and *Mohan Singh and Ors. v. International Airport Authority of India and Ors.* (1979) 9 S.C.C. 132, the Hon'ble Supreme Court has held by operation of Section 16 of the Act, right, title and interest in the land vest in the Government absolutely free from all encumbrances after the announcement of the award and possession is taken. However, it will be beneficial to reproduce the finding of the Hon'ble Supreme Court in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd.*, and *others*, where the Hon'ble Supreme Court while examining the provisions of Maharashtra Regional and Town Planning Act, 1966 and the provisions of Land Acquisition Act held to the following effect:

"16. After the award u/s 11 of the Act was made by the Collector he is empowered u/s 16 to take possession of the land, if the possession was not already taken, exercising power u/s 17(4). Thereupon, the land shall vest absolutely in the Government free from all encumbrances. It is well-settled law that taking possession of the land is by means of a memorandum (panchnama) prepared by the Land Acquisition Officer and signed by panch witnesses called for the purpose. Subsequently, the Collector hands over the same to the beneficiary by means of another memorandum or panchnama, as the case may be. But in this case Section 91 of the BMC Act statutorily comes into play which would indicate that the Land Acquisition Officer while making award should intimate to the Commissioner, Municipal Corporation of the amount of compensation determined and all other expenses. The corporation shall pay over

the same to the Land Acquisition Officer.

17. By operation of Sub-section (2) thereof, the amount of compensation awarded and all other charges indicated in the acquisition of the property shall be paid by the Commissioner, "thereupon the said property shall vest in the Corporation" In other words, on payment of compensation by the Corporation to the Land Acquisition Officer, statutorily the Corporation gets transfer of possession from the State and the acquired property vests in the Corporation free from all encumbrances. Thereby the Corporation becomes the absolute owner of the land free from all encumbrances including tenancy rights, if any, alleged to be held by the respondents.

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On taking possession, it became vested in BMC free from all encumbrances including tenancy right alleged to be held by the respondents. Possession and title validly vesting in the State, becomes absolute u/s 10 of the Act and thereafter the proceedings under the Act do not become illegal and the land cannot be re-vested in the owner. Only before taking possession, the Government can withdraw from inquiry u/s 45(1) of the Act or the High Court under Article 226 of the Constitution may quash it on legal and valid grounds. If the award u/s 11A was not made within two years from the date of the publication of the declaration u/s 6, as enjoined u/s 1A of the Land Acquisition Act, whether the notification u/s 4(i) would lapse. This Court in *Satendra Prasad Jain v. State of U.P.* had held that after the land stood vested in the State, even if the authorities failed to comply with the statutory requirements, it does not have the effect on the vesting of land in the State. Thereby the notification u/s 4(1) and the declaration u/s 6 do not stand lapsed. The same view was reiterated by another Bench in *Awadh Bihari Yadav v. State of Bihar*. The High Court, therefore, was not right in exercise of power under Article 26 of the Constitution in granting declarations as mentioned in the beginning or in making order of injunction against the appellants pending writ petitions. It is an equally settled law that a tenant cannot challenge the notification u/s 4 and declaration u/s 6 of the Act when the landlord himself had accepted the award and received compensation."

The said judgment of the Hon'ble Supreme Court was followed in *Hanumanthappa Vs. Muninarayanappa*, holding that person who approaches the Court belatedly will be told that laches close the gates of the Court for him to question the legality of the notification u/s 4(1), declaration u/s 6 and the award of the Collector u/s 11.

9. Subsequently, in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , the Hon'ble Supreme Court again refused to quash the acquisition proceeding relating to Maharashtra Regional and Town Planning Act.

10. A Division Bench of this Court in *Satish Kumar and Ors. v. State of Haryana*

and Ors., C.W.P. No. 7702 of 2001 decided on August 13, 2002 has held that the writ petition filed after 25 years of completion of acquisition is not maintainable since the land stand vested in the State Government after the Collector has made the award and the Government takes possession of the land. It has been held that the acquisition cannot be quashed on the ground that the acquired land has not been utilised by the State Government.

11. It may be pointed out that the petitioner relied upon a Division Bench of this Court in Jain School Society (Registered) Panipat v. State of Haryana and Anr. (2001)129 P.L.R. 93 C.W.P. No. 1828 of 1999 to contend that since no compensation has been paid therefore, the notifications are liable to be quashed. Then the learned counsel for the petitioner has relied upon Capital Stone Crushers Vs. The State of Haryana and Another, and Trilok Singh Mohan Singh Vs. State of Haryana and Others, to contend that since the amount of compensation has not been deposited and no payment having been actually made to the petitioners the entire acquisition proceedings stand lapsed.

12. We are unable to agree with the argument raised by the learned counsel for the petitioners. In view of the catena of judgments mentioned above, the land vests in the State Government free from all encumbrances after the award is announced and the pos-session is taken. Part V of the Act deals with the payment of the compensation. Section 31 and 34 of the Act read as under:-

"31. Payment of compensation or deposit of same in Court.-

(1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

2. If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the appointment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted.

Provided that any person admitted to be interested may receive such payment under protests to the sufficiency of the amount.

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

3. Notwithstanding any thing in this section, the Collector may, with the sanction of the (appropriate Government), instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited

interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be, equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

34. Payment of interest.- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period for one year on the amount of compensation or part thereof which has been not been paid or deposited before the date of such expiry."

As per the said provisions, the Collector is to tender payment of the compensation to the persons interested entitled thereto according to the award, and shall pay the same to them unless prevented by one or more of the contingencies mentioned in sub-section. Sub-section (2) contemplates that if the person interested shall not consent to receive it or if there be no person competent to alienate the land or if there be any dispute to the title, the Collector shall deposit the amount of compensation in the Court to which reference u/s 18 of the Act would be submitted. However, Section 34 of the Act contemplates that if the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest at the rate specified therein in the contingencies specified therein.

13. As per the contents of the award itself, the amount of compensation was offered to the petitioners. However, the fact remains that the amount of compensation has not been deposited in court as the same was not received by the persons interest. Since Section 34 of the Act contemplates the consequences of failure of Collector to deposit the amount of compensation i.e. the payment of interest, therefore, mere fact that the amount has not been deposited in court will not vitiate the acquisition proceedings. Since the consequences of non-deposit have been contemplated, therefore, it is such consequences alone with will follow and not that the acquisition proceedings would stand lapsed. The land stand already vested in State Government in terms of Section 16 of the Act on announcement of the award and on possession of the land having been taken. Therefore, non-deposit of the amount will not vitiate the acquisition proceedings.

14. In Administrator, Municipal Committee, Charkhi Dadri and Anr. v. Ramji Lal

Bagla and Ors. 1993(5) SCC 272 the Hon''ble Supreme Court has held that one of the well accepted tests for determining whether the provision is directory or mandatory is to see whether the enactment provides for the consequences flowing from non-compliance with the requirement prescribed. The Hon''ble Supreme Court was dealing with Section 44-A of the Punjab Town Improvement Act, 1922 as applicable to Haryana wherein time limit is prescribed for execution of a scheme. The Hon''ble Supreme Court held as under: "One of the well-accepted tests for determining whether a provision is directory or mandatory is to see whether the enactment provides for the consequence of non-compliance with its requirement prescribed. Section 44-A does not provide the consequence of non-compliance with its requirements. It does not provide expressly or by necessary implication that non-compliance therewith results in nullification of the acquisition or in the divesting of title of the trust or that on such non-compliance, the land acquired has to be restored to its erstwhile owners/claimants. It does not also provide, what should happen to the compensation already received by them. Evidently all these aspects could not have been left to be inferred. These are very vital matters and not matters of mere procedure. The divesting of title is a matter of substance and not a formality. So is the restoration of land, return of compensation received, interest, if any, to be paid on such returned amount, compensation for any development and improvements, if any, made on the land by trust within the period aforesaid. Absence of any provision for the above matters, shows conclusively that the provision in Section 44-A is only directory notwithstanding the use of expression "shall" therein. The said provision is meant to impress upon the trust and its authorities, the desirability of the time-frame within which the schemes should ordinarily be executed. But to construe the said admonition as leading to the nullification of the acquisition which has already become final would entail several complications and situations for which there is no provision in the Act."

The judgment in Jain School Society's case (supra) relied upon by the petitioner has been considered by an earlier Division Bench of this Court in C.W.P. No. 7702 of 2001, decided on 13.8.2002 and it has been found that the statutory provisions of Sections 16 and 18 of the Act have not been considered in the said judgment and therefore, the said judgment was not relied upon. In appeal, in fact, the operation of the said judgment has been stayed in the SLP by the Hon''ble Supreme Court. In Capital Stone Crushers Vs. The State of Haryana and Another, and Trilok Singh Mohan Singh Vs. State of Haryana and Others, the provisions of Section 34 were not brought to the notice of the court nor the amount of compensation was offered to the land owners for payment as is evident in the present case from the reading of the award itself. Since the statutory provision had not been considered nor the issue was debated in the comprehensive manner, therefore, it does not lay down correct law.

15. It was then contended by the petitioners that the actual physical possession of the land is still with the writ petitioners and therefore, presumptions of vesting of the land with the State Government u/s 16 of the Act cannot be drawn at this

stage. The said argument is not tenable in as much as the award Annexure P.15 itself makes a mention that not only the amount of compensation has been offered but also that land acquired vest in the ownership of the State Government and stand transferred to HUDA free from all encumbrances from the date of the award itself. Rapat Roznamcha No. 703 dated 11.8.1990 has been relied upon by the respondent HUDA to contend that the symbolic possession was delivered to HUDA on the said date. It has been held by the Hon"ble Supreme Court in Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR"s and others, that even when symbolic possession is taken in pursuance of the award made, the land stands vested in the State Government free from all encumbrances.

Thus, the writ petition filed by the petitioners challenging the acquisition proceedings is not maintainable and is dismissed.