
(1987) 08 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5551 of 1986

Darbari Lal and ors.

APPELLANT

Vs

Union of India and ors.

RESPONDENT

Date of Decision : 24-08-1987

Acts Referred:

Citation : (1987) PLJ 547 : (1987) RRR 484

Hon'ble Judges : M.M.Punchhi, J

Advocate : Mr. Rajiv Bhalla, Advocate., Advocates for appearing Parties

Judgement

Madan Mohan Punchhi, J. (Oral)

1. The predecessor in interest of petitioners Nos. 1 and 2 was their father Kidar Nath. The land of Kidar Nath and Satpal Singh, Petitioner No. 3, was acquired wayback in the year 1970 under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short, the Act). The Special Land Acquisition Collector, Pathankot, released compensation to both on 11.5.1971. Both these persons sent their respective applications on 16.5.1971 to the Special Land Acquisition Collector, Pathankot, disagreeing with the rate of compensation and obviously asking for an Arbitrator to be appointed to determine the right compensation. The application of Kidar Nath was received by the Special Land Acquisition Collector on 1.6.1971 and of Satpal Singh on 31.5.1971. Both these persons were communicated letters Annexures R2 and R.3 bearing the date 15.11.1972, intimating to them that the respective application was time barred, for it should have been filed within 15 days of the receipt of payment/communication of rates. The petitioners claim that no such communication was received by them and rather they have been waiting and clamouring to the respondents to have the matter referred to arbitration under the provisions of the Act. It is in these circumstances that the petitioners are in this Court seeking a mandamus. Such claim of the petitioners which has been turned as belated by the respondents is refuted on the ground of delay and on account of the time bar.

2. The principles and methods of determining compensation are provided in section 8 of the Act. It provides, inter alia, as follows:

"8. (1) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the matter and in accordance with the principles hereinafter set out, that is to say,

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been or is qualified for appointment as a Judge of a High Court;

"

Rule 9 of the Requisition and Acquisition of Immovable Property Rules, 1953 (for short, the Rules) is again specific on the subject. Subrule (3) thereof provides that the competent authority shall, as soon as may be practicable after the making of a requisitioning order or the service of a notice of acquisition, communicate to each person interested an offer of what, in the opinion of the competent authority, is a fair amount of compensation payable to such person in respect of the property requisitioned or acquired. Subrule (5) provides that every person interested to whom an offer is made under subrule (3) shall, within fifteen days of the receipt of the offer communicate in writing to the competent authority his acceptance or otherwise of the offer. If he accepts the offer, the competent authority shall enter into an agreement with him on behalf of the Central Government in Form 'K'. Subrule (6) provides that if any person to whom an offer is made under subrule (3) does not accept the offer or does not within fifteen days of the receipt of the offer communicate in writing to the competent authority his acceptance or otherwise of the offer, the competent authority shall, as soon as may be, submit to the Central Government a report setting forth the full facts of the case, particularly as regards the nature and extent of disagreement between himself on the one hand and the said person on the other hand and he shall also forward with the report all connected papers. The competent authority shall at the same time deposit in Court the amount offered by him to the said person under subrule (3).

A plain reading of the statutory provisions and the relevant rules makes it clear that the person to whom an offer has been made thereunder, is required to communicate in writing to the competent authority his acceptance or otherwise of the offer. It is deducibly clear that if a person does not communicate his acceptance or otherwise of the offer, it becomes a case neither of acceptance nor of refusal. In that situation, under subrule (6) the competent authority is required to report the matter to the Central Government setting forth the full facts of the case. The purpose for such a requirement is not other except to feed what is required to be done under Section 8(1)(b), aforequoted, because obviously in that situation no agreement stood reached between the person

concerned and the Central Government to be filled in Form 'K'. The Central Government then necessarily is required to appoint an Arbitrator for determining the amount of compensation which may appear to him just and specifying the person or persons to whom such compensation shall be paid (read subClause (e) of Section 8(1) of the Act). The reporting of the matter to the Central Government under rule 9(6) does not thus finalise the matter. It only means that the Central Government must when applied take the step to appoint an Arbitrator to determine the right compensation, because the offer made by the competent authority due to the noncommunication of acceptance or otherwise of the offer made to the person concerned, renders it neither a case of agreement nor disagreement. But here the fact remains that no agreement could factually come about to finalise the matter. Thus, everything remains open till the matter is finalised by the Arbitrator.

The matter can be viewed from another angle also on facts. The two sets of petitioners in their respective communications, on receipt of the remittance on 11.5.1971, wrote back within, a span of 5 days on 16.5.1971, requiring the Special Land Acquisition Collector to proceed further in the matter as presumably they were in disagreement of the price offered. Had the context of the letters been not so, there was no reason for the Special Land Acquisition Collector writing letter Annexure R2 and R3 taking shelter of the applications being time barred having been received on 1.6.1971 and 31.5.1971 respectively. The rule requires that communication should be made within 15 days of the receipt of the offer. The department treats the unilateral remittance of the sum as equivalent to the receipt of offer. The mandate is that communication in writing must be made within 15 days thereof. There is no further requirement that the competent authority must receive the communication within those 15 days. It goes without saying that the two sets of petitioners communicated back within 15 days and resorted to means of communication well known to law. The applications of the petitioners could not have been rejected as time barred. No evil consequence could even ensue in case they failed to communicate back. The matter in any case had to be sent to the Arbitrator when no agreement had been reached between the parties.

The defence of delay and bar of limitation in the circumstances do not hold good. When the law requires a thing to be done in a certain way, then it has to be done in that way and no other. It is rather the respondents who have been negligent in not giving their attention to the matter it rightly deserved. The defence is thus discarded.

Thus, on both the aforesaid point, the petitioners have a case for the issuance of a direction. It is thus ordered that respondent No. 1 shall appoint an Arbitrator/ Arbitrator under Section 8 of the Act and refer the matter to him/them for determination of right compensation and to pay, if required, the statutory solatium and interest from the date of the acquisition till the date of the payment of the amount of compensation. The petition is allowed in these terms. However,

in the circumstances of the case, I pass no order as to costs.