
(2006) 08 P&H CK 0536
In the Punjab And Haryana At Chandigarh

Gian Chand and Others	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 17, 18, 8, 9

Citation : (2007) 145 PLR 394 : (2007) 1 RCR(Civil) 758

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M.S. Bedi, J.—Union of India has filed this Misc. application for recalling the order passed by the Lok Adalat and for determination of the matter on merits by the Court.

2. I have gone through the order passed by the Lok Adalat on May 29,2000, by virtue of which order, the respondents have been directed to make reference to the dispute of determination of market value of the land acquired to "the arbitration within a period of one month u/s 18(b) of the Requisitioning and Acquisition of Immovable Property Act, 1952, (for short the "Act"). While passing the order, the Lok Adalat had specifically observed that in case the respondents object to the proposed order they "could move separate applications for sending the case back to the Registry of the High Court. Since the respondents-applicants seek to contest the matter on merits, the order of the Lok Adalat cannot be imposed upon the respondents in the present case. Therefore, the order of Lok Adalat is recalled and the case is taken up for final hearing on merits today itself.

3. Gian Chand and Ors., have filed this petition under Articles 226/227 of the Constitution of India for a writ in the nature of mandamus directing the respondents to appoint an Arbitrator u/s 8(i)(b) of the Requisitioning and Acquisition of Im-moveable Property Act, 1952, to assess the amount of compensation payable to the petitioners. It is averred in the petition that the

land belonging to the petitioners was requisitioned under the provisions of the Act, in the year 1965. The land was acquired by respondent No. 2 - Special Land Acquisition Collector, Pathankot, District Gurdaspur, acting as Competent Authority in Form "J" dated March 9, 1970 and published in Government gazette dated March 17, 1970, u/s 17(1) of the Act. In April, 1971, a part payment in account was made to the petitioner. As the compensation could not be fixed by an agreement between the parties as per the provisions of the Act, the petitioner applied for appointment of the Arbitrator but none was appointed. It is specifically averred in the petition that no agreement was entered into between the petitioner and the competent authority in form "K" as prescribed in Rule 9 of the Requisitioning and Acquisition of Immoveable Property Rules, 1953. (for short "the Rules"). The petitioner approached respondent No. 2 repeatedly but no Arbitrator had been appointed till date. The petition has been contested by respondent No. 1 by filing a written statement, by taking up objection that the petitioners had accepted the compensation determined by Special Land Acquisition Collector, the Competent Authority, without any protest and have approached the High Court after a period 17 years and the petition deserves to be dismissed being barred by time. The acquisition notification in Form "J" was issued in this case on March 13, 1970. The petitioners did not apply for the appointment of the Arbitrator within 15 days or thereafter under the provisions of Rule 9(5) of the Rules. The Arbitrator had been appointed in the cases where the applicants had applied for appointment of the Arbitrator within stipulated period of 15 days as provided under Rule 9(5) of the rules, as per the Punjab Government notification published on August 19, 1977. It is averred in the written statement that fair, just and adequate compensation had been received by the petitioners and Mr. Chuni Lal without any protest. The averment that no agreement in Form "K" had been executed, has not been specifically denied. No such agreement in Form "K" has been placed on record.

4. I have heard the counsel for the petitioners as well as counsel for the respondents and gone through the entire record. As per Section 8 of the Act, where any property is requisitioned or acquired under this Act, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with principles set out therein. Section 8-A lays down that where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement. As per Section 8(b) of the Act, where no such agreement can be reached, the Central Government shall appointed an Arbitrator. No doubt, where the compensation could not be fixed by an agreement and the authority has failed to appoint the Arbitrator within reasonable time, it is incumbent upon the land owners to approach the High Court expeditiously for a direction to the authorities to comply with the statutory duty as enjoined by Section 8(i)(b) of the Act. A perusal of Rule 9(5) of the Rules, indicates that every person interested to whom an offer is made under sub-rule (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" The proforma Form "K" under Rule 9(5)(i) has been prescribed as per the Rules. In the present case, the provisions of Rule 9(5) of the Rules have not been complied with as such it cannot be said that the petitioner/predecessor-in-interest of the petitioners had accepted the offer. I have also considered the contention of the counsel for Union of India that a person is required to accept or reject the offer within 15 days of the receipt of the offer, and communicate in writing to the competent authority his acceptance or otherwise of the offer to protect his right of reference to Arbitrator. But I do not find any force in the same in view of the statutory command of Section 8(i)(b) of the Act. A similar question had come up before this Court in the case of Dalip Singh v. The Union of India and Ors. ILR1989 All 70. It was observed in the said judgment as under:

2. I have heard the learned Counsel for the parties. I am of the view that this petition ought to be allowed. Sub-clause (b) of Section 8(1) of the act casts a duty on respondent No. 1 to appoint an Arbitrator in case there was no agreement regarding Compensation between the landowner and the Central Government in accordance with the procedure provided by Rule 9 of the Rules framed under the Act. Even if the petitioner accepts compensation without protest it makes no difference. It is for respondent No. 1 to prove that the amount of compensation received by the petitioner was fixed by agreement. There is not even an averment to this effect in the written statement. In view of the provisions of Section 8(1)(b) of the Act, respondent No. 1 ought to have appointed an Arbitrator irrespective of the fact whether or not a request for making such an appointment had been received from the petitioner. The stand taken by the respondents that the application of the petitioner was received on 1st June, 1971 i.e. beyond the period of 15 days mentioned in Rule 9 is wholly inconsequential and is not sustainable.

5. A similar question had cropped up in the case of Godavari Devi v. Union of India and Ors. 1987 P.L.J. 509. It was held as follows:

The controversy centers around the true import and applicability of the provisions of Section 8 of the Act and Rule 9 of the Rules framed thereunder. Reproduction of these provisions need not burden the judgment. To cull out the principles applicable, the binding precedent of Shankar Singh and Ors. v. Union of India and Anr. 1975 R.L.R. 6 followed in C.W.P. No. 4414 of 1982 {Inder Singh and Ors. v. Union of India and Ors.) decided on July 24, 1984, and Ors. of the same kind, which need not be mentioned here, come to aid. It has been authoritatively held in these precedents that even if the landowner accepts the compensation without protest, it will not make any difference for the purposes of the Act. Further even receipt of compensation, partial or full without formalities prescribed by Section 8 of the Act and Rule 9 of the Rules, will not prove that the compensation has been fixed by agreement. In case of an agreement, a document in form "K" needs to be executed between the parties. Unless and

until from "K" is written between the parties, the matter cannot be said to have reached a finale.

6. The plea of limitation which has been raised in the present case by the learned Counsel for the respondents was also raised in the case of Godavari Devi (supra). Taking into consideration the statutory lapses, this Court has observed that in the case of breach of statutory obligation, the delay for appointment of Arbitrator will not tell on the claim in any manner. The relevant observation reads as under:

These petitions in these circumstances would require acceptance by directing the respondents to appoint arbitrator/arbitrators to determine the right compensation due to the petitioners. As a last bid, the learned Counsel for the respondents made a vain attempt to have the relief withheld on the ground of laches by contending that the petitioners remaining silent for all these years which fact should go against them. The argument, though attractive, would not cut any ice for the reason that according to the petitioners they have been visiting the office of the respondents from time to time and even sending reminders. With the condition in which the records of the cases have been kept by the respondents, it is difficult to doubt the statements of the petitioners that they had been waiting for action at the hands of the respondents and, therefore, I reject the plea of laches. This would even negative the next argument of the respondent's counsel that if a thing is to be done in a particular manner, it should be presumed to have been done in that manner. If the record does not disclose that anything was done in the manner it was expected to be, the petitioners having a right to rightfully compensated for the acquisition of their lands and the mere fact that the matter has been delayed for the appointment of arbitrator/arbitrators, does not tell on their claim in any manner.

7. In another case Union of India (UOI) Vs. Bhajan Lal and Others, the plea of limitation was raised in a matter of compensation where there had been violation of Rule 9 of the Rules, ignoring the lapses of more than 30 years was held to be immaterial for the exercise of jurisdiction under Article 226 of the Constitution of India, as there was a patent violation of Rule 9 of the Rules.

8. In view of the above discussion, keeping in view the provisions of Section 9 of the Act and Rule 9(5)(i) of the Rules, the writ petition deserves to be allowed as there is neither any agreement in Form "K" having been executed between the parties nor the land owners communicated to the competent authority that they were ready to accept the compensation offered by him in full and final settlement of their claim. Therefore, it was incumbent upon the- Central Government to have referred the case of the petitioners to the Arbitrator.

9. The writ petition is allowed and a direction is issued to respondent No. 1 to appoint Arbitrator/Arbitrators u/s 8 of the Act, within a period of two months after the receipt of the copy of the order, and refer the matter to him/them. It will be appreciated in case the Arbitrator appointed decides the matter expeditiously.