
(1991) 12 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3456 of 1989

Gian Singh

APPELLANT

Vs

Union of India .

RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

Citation : (1993) 1 CurLJ 25 : (1992) PLJ 137 : (1992) 2 RRR 1

Hon'ble Judges : M.S.Liberhan, J and V.K.Jhanji, J

Advocate : Jaishree Thakur, Advocate, M.L. Sarin, Sr. Advocate,, Advocates for appearing Parties

Judgement

M. S. Liberhan, J.

1. This order will dispose of civil writ petition Nos. 3456, 3457, 3458, 3459, 3460, 3461, 3462 and 3463 of 1989 as common questions of law and fact have been raised in all these writ petitions.

2. As the facts are pari materia in all the writ petitions, it would be sufficient that the facts are taken from civil writ No. 3456 of 1989. The land of the petitioners was requisitioned under the provisions of the Defence of India Act, 1962 and its possessions was taken by the respondents on 27.7.1966. Ultimately, the land was acquired and a notice in form 'J' dated 14.1.1971 was published in the Punjab Government Gazette dated 26.2.1971 under Section 7 of the Requisitioning and Acquisition of Immoveable Property Act, 1952 (hereinafter referred to as "the Act"). The competent authority offered a nominal compensation which was not accepted by the petitioners and a request was made for the appointment of an Arbitrator to determine the just and fair compensation. No agreement has been entered into between the ownerslandlords and the competent authority in form 'K' as prescribed in Rule 9 of the Requisitioning and Acquisition of Immoveable Property Rules, 1953 (hereinafter referred to as "the Rules"). According to the petitioners, the respondents have been appointing Arbitrators in case of claimants whose land was also acquired under the same Notification as that of the petitioners from

time to time. Even in July, 1977 with respect to some of the claimants, an Arbitrator was appointed who gave an award against which F.A.O. No. 410 of 1980 is still pending. The petitioners through this writ petition have sought a mandamus directing the respondents to proceed in accordance with Section 8 of the Act and appoint an Arbitrator in order to assess the just and fair compensation payable to them.

3. The respondents raised the defence that the petitioners never applied for the appointment of an Arbitrator and as such no Arbitrator can be appointed. Secondly, they have received the payment after executing form 'K' as full and final settlement of their claim which debars them from seeking the appointment of an Arbitrator. It was claimed that the petition is belated and liable to be dismissed on the ground of laches inasmuch as the petitioners could have approached this court in the year 1977 when in case of some persons an Arbitrator was appointed.

It would be expedient to mention here that though the written statement has been verified to the effect that the petitioners have received compensation in form 'K' as full and final settlement of their claim to the best of the knowledge of the respondents derived from the official records. The official record was produced at the stage of preliminary hearing. The learned counsel for the respondents failed to show any form 'K' or any other document or in any other manner which would lead to an inference that the petitioners accepted the compensation as full and final settlement of their claim.

4. The learned counsel for the petitioners relied upon *Banto Ram v. The Union of India*, 1989(2) RRR 123 : 1989(2) LL.R. 136; L.P.A. 284 of 1972 (*Smt. Nirmal Khosla v. The Union of India* etc.) decided on 2.4.1975; *H.D. Vora v. State of Maharashtra and others*, 1984 (2) Supreme Court Cases 337 and *Dalip Singh v. The Union of India and others*, 1989(1) L.L.R. 70 in order to contend that it is the mandatory duty of the respondents to appoint an Arbitrator where compensation has not been accepted in full and final settlement of the claim of the petitioners. It is contended that the State cannot raise the technical objection and is estopped by its own act and conduct to deny the relief to the petitioners. Further reliance was also placed on *Hari Krishan Khosla (dead) and others v. The Union of India* and another, AIR 1975 Punjab & Haryana 74, a Full Bench decision of this Court wherein vires of the Act were upheld by observing that the owners shall be entitled to receive all the benefits as payable under the Land Acquisition Act. As a necessary corollary, it was observed that provisions of Section 28A of the Land Acquisition Act (as amended by Land Acquisition Act 1984) would be applicable.

5. In *Darbari Lal and others v. The Union of India and others*, 1987 RRR 484 : 1987 L.A.C.C. 723, the Hon'ble Judge after noticing the provisions of Section 8 of the Act, read with Rule 9 of the Rules, observed, that on a plain reading, it is deduceable, that if a person does not communicate his acceptance or otherwise of the offer, it will become a case of neither acceptance nor of refusal.

Resultantly, the authority is bound to refer the matter to the Government setting forth full facts, upon which the Central Government is bound to appoint an Arbitrator qualified to be a Judge of the High Court, to determine the right compensation because the offer made by the competent authority to the persons concerned become neither a case of agreement nor of disagreement. It is only after the award of the Arbitrator that the matter stands finalised, otherwise it remains open. It was further observed that :

"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."

6. In L.P.A. No. 284 of 1972, it was observed that claiming of the compensation is not a money suit but it is compelling the Government authorities to do the duty enjoined on them by law. It was further observed that no limitation is required for issuing a writ of mandamus though the delay approaching the Court may in certain circumstances be a valid consideration in the matter of exercise of discretionary jurisdiction under Article 226 of the Constitution of India. The Hon"ble Division Bench after referring to the period of colonial regime of Britishers relied upon the observations made in which runs as under :

"In accordance with British jurisdiction no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of justice. And it is the tradition of British justice that Judges should not shrink from deciding such issues in the face of the executive."

It was observed that "it does not lie in its mouth to deny to the appellant the compensation for her land which has admittedly been acquired and taken over by the Govt."

7. The Hon"ble Supreme Court almost under similar situation, while dealing with the objection of challenging the requisitioning belatedly i.e. almost after the lapse of 30 years, in the case of H.D. Vora (supra) observed that the order of requisition was challenged and that it was not for public purpose and hence void. While dealing with the facts of the said case, it was laid down that the Government cannot under the guise of requisition continue for an indefinite period of time because that would be a fraud on the power conferred on the Government. The Hon"ble Supreme Court, in view of the facts and circumstances of that case found the delay to be immaterial.

8. It would be expedient at this stage, to reproduce Section 8 of the Act:

"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 manner 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.

9. I can venture to state that to mitigate harshness of law, the fairness of equity has to be blended; and the Courts cannot be too ambivalent. Practical and factual view is a matter of fact that the State Departments move at a snail's speed. While denying the issuance of writ on the ground of laches, one cannot be ignorant of substantial injustice particularly when no want of bonafides are imputed to the petitioners.

10. The State belongs to the people who inhabit it. State cannot be founded on injustice. The object of law is to give due what is due to one. There cannot be any fixed watertight litmus formula for refusal of a relief on the ground of laches.

11. The Legislature in its wisdom while framing the Constitution and conferring the power under article 226 of the Constitution of India, has specifically kept out the limitation for seeking the relief under Article 226.

12. The Executive is bound to act in pursuance of the powers given to it by law. In accordance with it, the State is bound to support, an order with respect its legality or its action before the Courts of law. State has to exercise the powers for public good for which it is meant, State cannot be permitted to shield its activities on hypertechnical ; grounds. State cannot be treated as an ordinary litigant. State cannot be permitted to peruse their objections or technical points to the point of defeating justice as it has social dimensions. The State is bound to distribute impartial and even handy justice. The Government cannot be permitted to reflect a callous outlook towards the rights of the people. It is a sacred duty of the State to give to a person what is due to him. The administration should have acted fairly which can be judged from the facts and circumstances of each case.

13. There cannot be any gain saying that in view of the various amendments in the provisions of the Land Acquisition Act, as amended till date, the endeavour of the Legislation is towards giving a fair compensation of the property compulsorily taken by the State. It is Just that a person is given the right compensation for the property of which an individual has been deprived by the State in public good. Delays cannot be permitted to become tyrannical masters.

14. Eschewing the technical rules and reading the statutory provisions, it proliferates that the State is bound to appoint an Arbitrator where compensation had not been accepted. Delay may bar a remedy but it does not do away with the claim. For maintaining faith in law, much higher standards are expected from the State. While delaying the appointment of an Arbitrator by its own conduct and act, the State cannot turn round and say that the remedy to get the Arbitrator appointed through a writ of mandamus be refused on the ground of

laches and just relief be refused and injustice by perpetuated.

15. The Legislature in its wisdom, in order to give just compensation to the parties, has provided an additional remedy under Section 28A of the Land Acquisition Act to the effect that in case the claimants had not claimed the enhanced compensation, and on the claim petition of some of the other claimants whose land was acquired along with the claimants who have claimed further the enhanced compensation the market value is assessed at a higher rate than the one assessed by the Land Acquisition Collector or the Arbitrator, he would be at liberty to claim the same compensation. It has been precedently accepted that the State cannot be permitted to pay two different rates for the land acquired by the same notification to the different claimants. Reference may be made to 1988 PLJ 656.

16. It is axiomatic that the cardinal principles for dismissal of a writ petition on the ground of laches is that, if delay has resulted in an injustice to any party or a party has acquired a right on account of passage of time or a person has changed his position because of lapse of time or some third person's right has intervened or it is not in the interest of justice to unsettle a settled matter, the necessary relief for issuing of a mandamus may be declined. In the case in hand, keeping in view the facts and circumstances, there is none of the said eventualities arisen. It is an ultimate question of payment of compensation, which as a last resort renders as a means of affording redress to a person who has been dispossessed of his property against his will. The matter still has not been finally decided. The appeal against the award of the arbitrator for the acquisition of land under the same Notification and similarly situated, which fact is not disputed, is pending in this Court. Taking judicial notice of the illiteracy and people's ignorance of their legal rights in India, it would be reasonable to meet the ends of justice, in the facts and circumstances of this case, to direct the respondents to appoint an Arbitrator in terms of Section 8 of the Act, within three months from today.

17. In the light of the above direction the writ petition is allowed with costs.