
(1987) 06 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5546 of 1986

Godavari Devi

APPELLANT

Vs

Union of India and ors.

RESPONDENT

Date of Decision : 02-06-1987

Acts Referred:

Citation : (1987) PLJ 509 : (1987) RRR 316

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

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

Judgement

M.M. Punchhi, J. (Oral)

1. This bunch of petitions (Nos. 5546 to 5548, 5550, 6080, 6081, 6801, 6802, 6883, 6885 to 6889 and 6911 to 6914 of 1986) has been preferred by landowners of Tehsil Pathankot, whose area was acquired under the Requisitioning and Acquisition of Immovable Property Act, 1952, (hereinafter called 'the Act'). The acquisition proceedings started way back in the year 1970. The respective landowners were made payments of compensation and as alleged by all of them in their respective petitions, they were dissatisfied with the measure of compensation. Each one of them has averred that an application for appointment of an arbitrator to determine the correct compensation was made to the Special Land Acquisition Collector, Pathankot, but in all these years, no arbitrator had been appointed to determine the correct market value of the acquired land. Each one of them has also asserted that payments were received by them under protest and no argument in statutory form 'K' was executed by them in favour of the Union of India in token of having received the compensation in full and final settlement by way of agreement. Simultaneously, each landowner has asserted that despite their periodic enquiry from the concerned office or even by sending reminder, no response was given by the respondents, which has given occasion to the petitioners to approach this Court by means of these petitions.

2. The controversy centres 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 judgement. To cull out the principles applicable, the binding precedent of Shankar Singh and other v. Union of India and another, 1975 P.L.R. 6 followed in C.W.P. No 4414 of 1982 (Inder Singh and others v. Union of India and others), 1985 R.R.R. 599, decided on July 24, 1984, and others 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 form 'K' is written between the parties, the matter cannot be said to have reached a finale.

3. The defence of the respondent is common in all these cases, except varied in a few minor details, sought to be supported from the record. Uniformly it has been asserted that the landowners received payment without protest. This defence is to be noticed and rejected on the anvil of Shankar Singh's case (supra). It would not make any difference even if the petitioners has accepted compensation without protest. The fate of these cases hangs on the premise as to whether the respondents can shut the mouth of the landowners by production of agreement between the parties in form 'K'. Now except to notice another contention, which deserves outright rejection, that the record with the respondents has perhaps been tampered with or stolen in order to account for the absence of form 'K' in each respective case, time is ripe to deal with individual cases for the disposal of these petitions.

4. C.W.P. No. 5518 of 1986 would deserve outright acceptance, for no record is available with the respondents, to support their plea in the written statement that the compensation accepted by the petitioner had been consensual.

5. In CWP Nos. 5546, 5547, 5550, 6081, 6883, 6888, 6801 and 6802 of 1986, the records of the respective cases are available but significantly form 'K' is not available on either file. The plea of the Union of India to the effect that the petitioners had received payment by agreement fails, for it is not substantiated on the record.

6. In CWP Nos. 6885, 6886, 6887, 6889, 6911, 6912, 6913 and 6914 of 1986, the records available with respondents do not bear agreements in form 'K'. There are, however, available receipts in form 'L'. These receipts exhibit nothing but partial payment of compensation, without any indication of any final settlement of the compensation by agreement.

7. Lastly there is case No. 6080 of 1986, in which there is neither form 'K' nor from 'L', but allegedly when payment was received without protest and that too entirely, the respondents claim that it must be taken to be consensual. The way

the other petitions have been dealt with earlier, the contention in this case too on noticing deserves outright rejection.

8. These petitions in these circumstances would require acceptance by directing in 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 statement 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 arguments 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 have a right to be 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.

9. For the reasons recorded above, these petitions are accepted and a direction is issued to respondent No. 1 to appoint arbitrator/arbitrators under section 8 of the Act and refer the matter to him/them and to pay if required, the statutory solatium and interest from the date of acquisition till the date of payment of the amount of compensation. I shall, in the circumstances, not burden the respondents with costs.