
(1989) 10 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1046 of 1987

Hamir Singh

APPELLANT

Vs

The Union of India and another

RESPONDENT

Date of Decision : 04-10-1989

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1989) 10 P&H CK 0004

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : M.L. Sarin, with Miss Jai Shree Thakur, for the Appellant; C.S. Chawla, for the Respondent No. 1, for the Respondent

Judgement

I.S. Tiwana, J.—This bunch of forty-one Regular First Appeals Nos. 1552 to 1558, 1278, 1453, 1081, 1275, 1739, 1740, 1046 to 1061, 1413, 1082, 1984, 1085, 1133, 1134, 1101, 1272 to 1274, 1276 of 1987 and 1436 of 1588, directed against four different but similar award of the District Court, Bhatinda, is being disposed of through this common judgment, as the respective references sought by the landowner-claimants u/s 18 of the Land Acquisition Act (for short the "Act") have been dismissed on the one and the same ground i.e. barred by time. It is necessary to notice the following backdrop of the cases to appreciate the controversy raised in these appeals.

2. As a result of the notification published u/s 4 of the Land Acquisition Act (for short the "Act") on October 9, 1974, a huge chunk of land measuring more than 10, 768 bighas) forming part of the revenue estate Bhatinda was acquired by the Union of India for the establishment of a Military Cantonment. The proceedings, that followed this notification, concededly rendered hundreds of families as landless. Possession of this land was taken by the acquiring authorities on June 11, 1975, i.e., the date on which the Land Acquisition Collector pronounced his award u/s 11 of the Act Since the Appellants did not accept the adequacy or the fairness of the compensation awarded, they claim to have filed their respective

applications u/s 18 of the Act from June 25, 1975 to July 19, 1975, in the office of the Collector at Bhatinda. As per their stand, they had been approaching the said office repeatedly for their applications being forwarded to the District Court at Bhatinda for trial, but with no result. However, quite a good number of other similar references were finally disposed of by the District Court, Bhatinda, somewhere in July to September, 1979. Since the Appellants remained unsuccessful in persuading the authorities to forward their applications to the Court for trial" they approached this Court to seek that relief A bunch of these petitions was finally disposed of by a Full Bench of this Court on November 3, 1982. The said judgment is now reported as *Sher Singh v. Union of India* (1983) 85 P.L.R. 86. In those petitions the primary defence raised on behalf of the Union of India, besides certain other technical objections, was that the Petitioners i.e. (now the Appellants) had failed to file applications u/s 18 of the Act and, therefore, the Collector could not forward anything to the Court for determining the claims of the Appellants. It was sought to be highlighted that in some of the cases decided by the District Court the compensation awarded had been enhanced considerably and that tempted the Petitioners to file those petitions as a devised methodology to take their alleged applications to Court for pocketing a fat amount of compensation. This Court, after examining the factual matrix and commenting upon the working of the office of the Collector at Bhatinda, to which a detailed reference is made hereunder, disposed of these petitions with the following directions:

Accordingly, we would herein direct that on a proper application (precisely detailing his claim of having filed an application u/s 18 of the Act, made by the writ Petitioner to the Collector, the latter shall refer the same to the District Court, will then proceed to decide the contentious dispute betwixt the parties, whether the stand of the Petitioner herein is correct or otherwise. In the event of the matter being decided in favour of the writ Petitioners, the District Court would inevitably proceed to try and adjudicate on the reference u/s 18 of the Act.

This is how the respective references of the Petitioners reached the Court for disposal. It may be mentioned here that in most of the cases the carbon copy of the alleged applications filed by the Appellants u/s 18 of the Act were made annexures to the respective writ petitions filed by them. This is how the Full Bench expressed itself while disposing of the matter before it:

Reverting back, it has already been held that in the present writ proceedings it is inapt to decide and pronounce on the tangled question whether any reference application u/s 18 had been filed by the Petitioner earlier on which point the parties are diametrically opposed to each other. However, it seems to be equally elementary that this dispute in its context of involving the valuable statutory rights of claimants cannot be left in the limbo. It has to be carefully adjudicated and pronounced upon. Herein we were both surprised and distressed to notice the wholly chaotic fashion in which the valuable rights of the claimants in this context seem to be cavalierly treated at the ministerial level by the Respondents

Learned Counsel for the Union of India despite being repeatedly pinpointed to do so could bring no instruction or coherent rule and even a consistent practice in its Department to receive, diarise, and transmit the references u/s 18 of the Act when filed by the landowners. The stand of the Petitioner consistently was that even when claimed and insisted upon, no receipt or acknowledgement for filing the reference u/s 18 was issued by the office of the Collector. This was not denied on behalf of the Respondents, and not only that, no firm procedure for dealing with the same could be spelt out. The Respondents produced a register in which some erratic entries about the receipt of some references u/s 18 had been made. Curiously the printed columns of the register pertained to matters altogether different, and which indeed have little or no relevance at all to land acquisition cases. It would appear that this is nothing more than an impromptu record kept by wayward officials at their whim with regard to receiving and diarising of references u/s 18.

The very look of this register shows that it is neither in proper form nor has it been maintained with any regularity. There is no page marking, nor the purpose for which it is maintained is indicated anywhere. In fact, as is evident from the columns it is a stock register meant for Patwaris for entering the articles to be used for measurements and almirahs and boxes in their custody. Even the irrelevant headings of the columns had not been corrected. Most of the pages have been left blank with cross-marks. Entries appeared to be made in the most reckless and casual manner. These are neither date-wise nor village wise. For instance, entries Nos. 2 to 37 and 47 to 49 bear no date whatsoever. Sometimes there is a gap not merely of days but of months together between several entries. In between the entries under the date of 11th October, 1973 there are a few entries dated the 11th October, 1971. After several entries pertaining to the year 1974 immediately entries in the months of May and June, 1975 have been made. Curiously these are then followed by entries of 1974 again. Thereafter come two entries of 1977 followed by some of 1978. Surprisingly, after 1978 again one finds some entries relating to the year 1975; then of 1978 and yet again of 1975. These are followed by those of 1976 and 1978. If, as alleged by the Respondents, it is a receipt register then entries could only have been strictly date-wise and cannot possibly be in so topsyturvy and haphazard manner, as noticed above. Perhaps the most startling thing that appears is that in some cases applications seem to have been entered after a lapse of as much as three years, either from their dates or from their receipt. The representative sample of seven entries is as under:

Jagbant Singh S/o. Bishan Singh, Bhatinda

Date of Award 11.6.1975

Date of receipt 22.7.1975

Date of entry 28.9.1978

--do--

"

"

--do--

"

"

--do--

"

"

--do--

"

"

--do--

"

"

Charan Singh S/o. Jagat Singh, Bhatinda

14.7.1976

25.8.1979

There is a note against the last entry that the application has been found out of a bundle of papers and has thereafter been entered. It is plain that both about the procedure and the mode of maintaining this register it seems that the less said is the better.

Learned Counsel for the Petitioner then brought to our notice the Standing Order 28 of Financial Commissioner with regard to land acquisition, Paras 131 and 132 and the prescribed forms therein lay down a mandate on the concerned officials of the Department to maintain a proper and true record of the receipt, transmission and ultimate orders passed in references u/s 18 as also other connected matters with regard to acquisition and compensation. This enjoins the maintenance of a missal band register, that is, a regular stitched register for this purpose. It, however, appears that these directions have either passed into oblivion or are being honoured wholly in breach and in any case the Respondents not only seem to be unaware thereof but even claimed that these were not applicable. We, therefore, cannot but direct a strict compliance with these instructions which are binding and mandatory on the Respondents. It is to be hoped that in future not only compliance will be made, with the long standing instructions but in fact any lacuna discernible therein would be filled with the

utmost administrative vigilance.

In the aforesaid context, it inevitably follows that the Petitioner in this case has been denied the right of a meaningful enquiry (which he undoubtedly has) into his very claim that he had in fact preferred a reference u/s 18 which has not been duly forwarded. A copy of the said reference has been placed on the record as Annexure P--1. Affidavit of the counsel who states to have filed the same is annexed to the petition. The stand of the Petitioner that in respect of two other pieces of land he had filed references which have been admitted by the Respondents may well lend weight to his claim that with respect to this particular piece of land also he had claimed similar relief. In the absence of a clear-cut procedure on behalf of the Respondents and the glaring failure to maintain the prescribed record it may well be presumed prima facie that written application u/s 18 was preferred. However, this obviously cannot be conclusive and it would be open to the Respondents to rebut the same. It is thus manifest that the correctness of the rival claims on either side have to be decided in a proper forum. This is obviously the Court of the District Judge which can adequately pronounce upon the question whether a reference was duly made to the Collector and, if so, regarding the validity. This is now well settled by the decision of the Full Bench in *M/s. Swantantra Land and Finance Private Limited v. State of Haryana*, AIR 1975 Punjab and Haryana 52 holding that it is open to the District Judge to go behind the reference and examine its validity.

It is rather tragic that in spite of a clear-cut observation made in the judgment (the relevant part has been underlined) that the burden was on the Respondent Union of India to rebut satisfactorily that the claimants had failed to file their applications u/s 18 of the Act, the Court proceeded to examine the matter from an angle as if the Appellants had to establish the exact date and time of filing their applications. Not only this, I am satisfied from the evidence on record that the Court took a wholly erroneous view of the facts established by the Appellants.

3. The primary reasons for not accepting the evidence led by the Appellants are; i) They failed to hand over their applications u/s 18 of the Act to the Collector and instead claimed to have given the same to the Naib Tehsildar at Bhatinda and thus they did not comply with the provisions of Section 18 of the Act; ii) since good number of reference applications filed by the landowner-claimants had been forwarded by the Collector to the Court for adjudication then in the absence of any allegation of mala fides against any of the officials in that office it had to be presumed that no reference application were filed by the Appellants; iii) the delay in approaching the High Court by way of filing the writ petitions had not been properly explained; iv) no complaint had been made against any of the officials of the Department that the Appellants' applications u/s 18 of the Act were not being forwarded to the Court for trial; v) the writ petitions appeared to have been filed with the help of some of the officials of the Department to take advantage of the irregularities committed in the office of the Collector; vi) the relevant register though maintained irregularly yet it contained entries about

some of the references received and forwarded to the Court for trial; and vii) in case the Appellants were not issued a receipt at the time of receipt of their respective applications u/s 18 of the Act, they should have sent the applications through registered post.

4. Having perused the evidence I find that none of these findings is sustainable. Some of the relevant deposition made by the official witnesses examined on behalf of the Appellants are as follows. Rachhpal Singh, Patwari (AW1):

I was posted as a Patwari in the office of Naib Tehsildar, Military Land Acquisition, Bhatinda, in the year 1974-75... xx xx The land references u/s 18 were used to be received in the office of the Naib Tehsildar, Military Lands at Bhatinda, There was no clerk in our office to receive the applications u/s 18. The partwaris present in the office or the Naib Tehsildar used to receive the applications No Patwari was appointed in this respect. Whosoever Appellant used to come to the office their applications u/s 18 were received and some of them were entered in the register and some of them might be not entered in the register. No receipt or acknowledgment was to be issued to the applicants.

He further admitted in cross-examination:

I used to receive the applications and the same were entered in the register after 2/3 days ...xx... xx... xx... xx All the claimants received the compensation, however, under protest.

This witness has been dis-believed solely for the reasons that he neither knew the date of his joining as a Patwari in the office of the Naib Tehsildar nor the date of his transfer from that office. Consequently, such a person according to the Court could not be believed. Besides this witness, two more persons, namely, Balwinder Kumar. Clerk in the office of the Military Land Acquisition Collector at Bhatinda (AW2) and Hukam Chand, Patwari (AW3), who worked in that office from February 1975 to June 1976 were disbelieved for no specific reasons. They have deposed almost in the same terms as was done by A. W. 1. Shri Balwinder Kumar (AW2) besides admitting that there was no regular or a prescribed procedure for accepting the applications made u/s 18 of the Act also deposed about the other factual aspect i.e. maintenance of the relevant register etc. He stated:

There are no signatures of any official of the Department against any entry in the Register. The entries regarding the receipt of Applications u/s 18 of the Land Acquisition Act, in the register, are by some different hands. There are so many pages left blank with cross-marks in the Register. The register is not village-wise. The last entry dated August 21, 1975 is at serial No. 210 and pertains to one Sunder Devi, who had filed a similar application u/s 18 of the Act. Then after 26 pages were left blank and then another entry of Jagwant Singh son of Bishan Singh whose land has similarly been acquired was made on July 27, 1975, at serial No. 1. Against this entry it is mentioned that the said entry, as a matter of fact, has been made on 28th September, 1978. Similarly, against the entries that

followed i.e. at serial Nos. 2, 3, 4 and 5. It is mentioned that applications were received on August 3, 1975, but the entries were made on September 28, 1978. ...xx...xx...xx...xx...xx...xx...xx Some of the entries are made with my hand. I have not got obtained the signatures of the applicants in the register. I also did not sign this register.

Similarly, Hukam Chand, Patwari (A.W. 3) has deposed:

The land references u/s 18 of the Land Acquisition Act used to be entertained in the office of the Naib Tehsildar, Bhatinda ...xx...xx...xx...xx...xx...xx...xx The said applications were usually received by the Naib Tehsildar and in his absence by any Patwari who-so-ever was present in the office used to take the said applications by the orders of Naib Tehsildar.

There was no practice of issuing any receipt or acknowledgement to the applicants. The applications which were received in the absence of Naib Tehsildar, Military Lands, those were not entered at the time of receiving in the register. They used to be entered after wards.

5. Jamiat Singh (AW 4), Hamir Singh (AW 5), Dhanna Singh (AW 6) and Sucha Singh (AW 8) landowner-claimants appeared to support the stand of the Appellants that the applications were filed u/s 18 of the Act during the period from June 25, 1975 to July 19, 1975 As per their stand, most of these claimants had come to the office of the Naib Tehsildar, Land Acquisition at Bhatinda in groups and after getting their applications typed they filed these together. They also deposed to the fact that when they approached the Patwari present in the office, they were asked to place their applications on a particular table and in spite of their asking, no receipts about those applications were issued to them. They were one in saying that they had repeatedly been approaching the parsons present in that office including the Naib Tehsildar for their applications being sent to the Court for trial No good reasons have been recorded by the lower Court to ignore these statements. As against this, all that is said by Shri Harbajan Singh Sodhi, (R.W. 1) is that

I remained posted as Special Land Acquisition Collector from April 1976 to June, 1983 ...xx...xx...xx...xx...xx...xx...xx I do not know if any person came to enquire the present cases...xx...xx...xx...xx...xx I cannot say if the present claimants gave any land reference to the Naib Tehsildar Bhatinda or not ...xx...xx...xx The land reference can be sent either to the Naib Tehsildar or direct to the Land Acquisition Collector, Jalandhar ...xx...xx...xx...xx...xx...xx The application register does not contain the signature of any official. The land references were sent by me about three years after the receipt of the same ...xx...xx...xx The people were coming to me and requesting me to send the land references.

Shri Gurcharan Singh (R.W. 2) who remained posted as Naib Tehsildar, Military Land Acquisition, Bhatinda, from 24th July, 1978 to 2nd July, 1980. deposed:

I cannot say about any thing happened prior to joining this office I cannot say if the present claimants gave the applications in the office or not

The next two witnesses Paramjit Singh (R.W. 3) and Surain Singh (R.W. 4) examined by the acquiring authorities deposed nothing relevant to the question in issue. In the light of the above noted depositions, it is difficult to appreciate as to how the various reasons recorded by the lower Court for disbelieving the claimants' evidence can be sustained. The chaotic working in the office of the Naib Tehsildar, Bhatinda who as per the stand of the Collector himself was competent to receive the applications u/s 18 of the Act, has been accepted by the official witnesses i.e. Rachhpal Singh (AW1), Balwinder Singh (AW2) and Hukam Chand (AW3). The two material witnesses examined on behalf of the Respondent-Union of India, i.e. Harbhajan Singh Sodhi (RW 1) and Gurcharan Singh, Naib Tehsildar (R.W. 2) have simply stated that since the names of the Appellants did not figure in the register maintained for the purpose, no reference applications were filed by the claimants u/s 18 of the Act. In the face of this noncommittal evidence of the Respondents, the positive stand of the Appellants that they had filed the applications within the time prescribed, cannot be said to have been rebutted in any manner. The last reason i.e. number, (vii) recorded by the lower Court for declining the claim of the Appellants is simply wonderful. The Court has observed that in case the people in the office of the Naib Tehsildar, Bhatinda, had failed to issue the receipts in token of having received the respective applications of the Appellants u/s 18 of the Act, the Appellants should have sent their applications through registered post. The Court failed to appreciate that having handed over their applications in the office of the Naib Tehsildar what was left with the Appellants to be sent through registered post. Moreover, at that stage on what account the Appellants could doubt the bona fide of the staff or the regular working of that office. They were always hopeful that the applications submitted by them would be forwarded to the District Court in due course in accordance with law. This having not happened, they approached this Court under Article 226 of the Constitution. I, therefore, have no hesitation in setting aside the conclusions of the lower Court that either the Appellants failed to make their applications u/s 18 of the Act or the same were not filed within the prescribed time. Ordered accordingly.

6. It is then accepted by the learned Counsel for the parties that all other issues pertaining to the adequacy or the fairness of the compensation payable to the claimant-Appellants have been decided in their favour. As a matter of fact, for determining the market value of the acquired land, the lower Court has depended upon a Division Bench judgment of this Court in L.P.A. No. 279 of 1982 (Kartar Singh and Ors. v. Union of India L.P.A. No. 279 of 1982) i.e. Exhibit A--2 and has fixed the following rates:

(i) For land up to a depth of 500 metres along the Municipal limits;

...Rs. 15/- per sq. yard.

(ii) For rest of the acquired land

...Rs. 8/- per sq. yard.

It deserves to be noted here that the above noted judgment in Kartar Singh's case (supra) has since been affirmed by their Lordships of the Supreme Court in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, Therefore, the award of the lower Court so far as it fixes the market value of the acquired land is upheld and affirmed. Further, I find it appropriate to notice the following observation made by their Lordships of the Supreme Court in Civil Appeal No. 3147 of 1988 (Nand Ram and Ors. v. The State of Haryana C.A. No. 3147 of 1988) decided on September 6, 1988, which, to my mind, apply to the facts of this case with full force:

The State cannot refuse to pay in respect of lands acquired under the same notification compensation at the reasonable market value reflected in the compensation awarded to the land owners whose similarly-situated lands had been acquired under the same notification for the same purpose by the notification of the same date.

7. For clarity's sake it is further mentioned here that besides the market value payable to the Appellants as per the award of the lower Court, they would also be granted the benefits of Sections 22(1--A), 23(2) and 28 of the Land Acquisition Act, as these stand after the enforcement of Act No. 68 of 1984.

8. At this stage, it is brought to my notice by the learned Counsel for the Appellants that some of them could not initially pay the requisite court-fee on the claim decreed on account of paucity of funds. However, by now, they have made up the deficiency. In the light of the observations made by their Lordships of the Supreme Court in Bhag Singh's case (supra), the delay in paying the Court-fee is condoned.