
(2003) 07 P&H CK 0152
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13031 of 2002

Karnal Improvement Trust	Vs	APPELLANT
Ram Parshad (Dead) through LRs.		RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23
Land Acquisition Act, 1898 — Section 18

Citation : (2004) 136 PLR 5 : (2003) 4 RCR(Civil) 212

Hon'ble Judges : N.K. Sud, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Surya Kant and Sanjeev Kaushik, for the Appellant; B.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sud, J.—This writ petition is directed against the award of the Tribunal constituted under the Punjab Town Improvement Act, 1922, Karnal, dated 4.5.2002 whereby 17 references u/s 18 of the Land Acquisition Act, 1894 have been disposed of. This petition pertains to the case of one of the claimants Ram Parshad who had since died and whose illegal representatives have been impleaded as respondents.

2. The facts relevant to decide the controversy, may first be noticed.

3. Karnal Improvement Trust, Karnal (for short "the Trust") vide resolution dated 20.8.1973 resolved to develop a Scheme No. 37 (for short, "the Scheme") for the development of the area comprised in the Old Sabzi Mandi. Pursuant to the resolution, a Notification u/s 36 of the Punjab Town Improvement Act, 1922 (for short "the Act") was issued by the State of Haryana on 7.9.1973 and a declaration u/s 42 of the Act was issued on 14.11.1976 acquiring the land covered by the Scheme. The entire property acquired under the scheme was situated within the Municipal limits of Karnal Improvement Trust. The properties of Ram Parshad and others were acquired under the Scheme. The Land

Acquisition Collector vide his award dated 24.5.1976 awarded Rs. 100 per square yard as compensation for the rear portion of the acquired property and Rs.200/- per square yard for the property abutting the main road. However, no compensation was awarded to the claimants in respect of the vacant land situated in front of their built up portion, commonly known as Phar land.

4. Dissatisfied with the award, Ram Parshad and various other claimants filed objections praying for enhancement of compensation. They also claimed compensation for the superstructures on the acquired land and also in respect of Phar land. These objections were referred to the Tribunal u/s 18 of the Land Acquisition Act, 1894. The Tribunal vide its award dated 21.2.1989 (Annexure P-2) disposed of 9 references, including that of Ram Parshad, awarding compensation in respect of built up area at the rate of Rs.1,072/- per square yard. However, the Tribunal did not award any compensation in respect of Phar land by holding that the Phar land was part of the street and, therefore, the claimants were not entitled to compensation for the same. It may also be mentioned that the Tribunal had earlier made another award dated 20.1.1988 in the case of Kartar Singh and 7 other claimants whereby a compensation of Rs. 1,336/- per square yard had been awarded in respect of the properties acquired under the same Scheme. However, in that award also, no compensation was awarded in respect of Phar land.

5. Ram Parshad and other claimants challenged the awards of the Tribunal in the High Court through various civil writ petitions primarily on the ground that the Tribunal had erred in not allowing compensation to them in respect of their Phar land and also in awarding compensation amount at less than the market value of the acquired properties. Similarly, the Trust also filed separate writ petitions challenging the award of the Tribunal on the ground that the compensation awarded was on the higher side.

6. The High Court vide its judgment dated 15.9.1989 passed in CWP No. 3489 of 1988 in the case of Vijay Kumar and Ors. v. State of Haryana and Ors., affirmed the findings of the Tribunal to the effect that the claimants were entitled to get compensation in respect of their acquired properties at the Rate of Rs. 1,336/- per square yard. It was further held that the claimants were also entitled to get compensation in respect of the Phar land at the same rate. However, the High Court allowed the Trust to deduct the development charges payable to the Trust in respect of the developed plots allotted to the claimants out of their claim for compensation. The case was, therefore, remanded to the Tribunal for assessing the entitlement of the claimants in respect of compensation amount keeping in view their rights in respect of the Phar land and the development charges payable to the Trust. The writ petition of other claimants and the Trust were also disposed of in terms of the aforesaid judgment in CWP No. 3489 of 1988. However, writ petition filed by the Trust in the case of claimant Ram Parshad viz. CWP No. 11579 of 1989 titled as "Karnal Improvement Trust v. Ram Parshad and Ors. " could not be disposed of and remained pending.

7. Being dissatisfied with the judgment passed by this Court dated 15.9.1989, the Trust filed Letters Patent Appeals in 7 cases before this Court which were dismissed vide order dated 29.4.1991 (Annexure P-3). The main findings were recorded in Letters Patent Appeal No. 1044 of 1990 titled as Mool Chand v. Karnal Improvement Trust", In 12 others cases, the Trust had filed Special Leave Petitions directly before the Hon'ble Supreme Court against the judgment of this Court dated 15.9.1989. However, the same were dismissed as withdrawn on 14.9.1989. Thereafter, the Trust had filed Letters Patent Appeals in 13 cases along with applications for condonation of delay. The same were also dismissed vide order dated 29.4.1991 along with Letter Patent Appeal No. 1044 of 1990 - both on the grounds of limitation as well as on merits.

8. Not satisfied with the judgment dated 29.4.1991 in Letters Patent Appeal No. 1044 of 1990, the Trust filed Special Leave Petitions in all the 20 cases before the Supreme Court. The Apex Court vide its judgment dated 11.9.1991 (annexure P-4) in "Karnal Improvement Trust v. Leela Wanti and Ors. disposed of 12 appeals, including the one in the case of Ram Parshad, in which one of the disputes was in respect of Phar land. The operative part of the judgment reads as under:-

"We have heard counsel on both sides at length. We are not satisfied that the question of title and possession has been properly examined. The title over the Phar has to be traced at least from the time of the decision of the Privy Council right through the years when the whole or part of the property came into the possession of the Custodian of Evacuees Properties and the subsequent changes of possession and ownership. In other words, the entire evidence, both documentary and oral, concerning the title and possessions over this property from the period anterior to the partition of India must be considered and the position regarding title and possession at the time of acquisition has to be decided. The High Court in our view was wrong in holding that the property belonged to the present respondents without a proper consideration of the evidence.

In our view, the whole question has to be re-examined by the Tribunal and the parties should be afforded an opportunity to lead additional evidence, if they so desire, on the question of title and possession and other connected matters relating to the property.

In the circumstances we set-aside the findings of the Tribunal as well as the orders of the High Court and direct the Tribunal to reconsider the question as aforesaid as regards the Phar and pass appropriate orders. It will be open to the parties to urge all their contentions relating to title and possession of the property. We are not expressing any view on any of the questions raised in these appeals and they are left open. The parties shall appear before the Tribunal on 7th November, 1991 for further directions of the Tribunal.

The appeals are disposed of accordingly."

The remaining 8 appeals were allowed by the Apex Court vide judgment dated 9.5.1995 (Annexure P5) in "Karnal Improvement Trust v. Smt. Parkash Wanti (died) and another". The Apex Court upheld by the primary contention of the Trust that the awards and decrees were void as the same had been given by the President alone did not by the Tribunal After holding the award to be void, the Apex Court gave the following directions:-

"It is not in dispute that in some cases, this Court remitted them for decision afresh by the Tribunal and we are informed, they are still pending decisions. Since these are old cases, State Government of Haryana is directed to constitute the Tribunal, as provided in the Act if not already done and the Tribunal will consider, decide and dispose of all the claims within the period of not more than six months from the date of the constitution.

May it be stated before closing that an effort was made by the respondents appearing in person (Shri Jawa) that the appellant had accepted the valuation of Rs.1326/- as fixed by the Tribunal in some cases and so, it should not be allowed to question the judgment of the High Court, when it had fixed the same valuation for the similarly situated lands of others. This point was sought to be brought home to us by referring to the table prepared by the Tribunal which is at page 211 of the C.A.4337/95. We have gone into this aspect and after Shri Verma for the appellants, we cannot accept this contention of Shri Jawa. Nor do we accept his contention that all the lands are similarly situated and the map at page 325 of this appeal does not establish the same.

The appeals, are, therefore, allowed. The judgment of the High Court and the awards of the Tribunal are set-aside. The Tribunal shall decide the dispute in accordance with law as stated earlier. Several questions on merits had arisen but since not allowed to be canvassed, we are not expressing any opinion on merits. All the questions are kept at large to be dealt with in accordance with law. No costs."

9. The petitioner, thereafter, filed an application (Annexure P6) before the Tribunal on 7.10.1995 in the 12 cases which were pending before the Tribunal on account of remand by the Apex Court vide its order dated 11.9.1991, praying that in view of the judgment of the Supreme Court dated 9.5.1995 in Smt. Parkash Wanti's case (supra), the entire proceedings be taken up de novo as the award had been held to be void. This prayer was declined by the Tribunal vide its order dated 4.11.1995 (Annexure P7) passed in the case of Ram Parshad. The Tribunal was of the view that the Supreme Court had remanded the matter only for determination of ownership and possession of Phar land and no other dispute was to be determined by the Tribunal.

10. The Petitioner also filed LA. Nos. 3 to 10 of 1996 before the Supreme Court seeking clarification of its order dated 9.5.1995. The Supreme Court dismissed the same on 22.1.1996 observing that "Interlocutory applications are dismissed".

11. It also deserves to be mentioned that the claimants had filed an application

for execution of the judgment of this Court dated 15.9.1989 in CWP No. 3489 of 1988 titled as "Vijay Kumar and Ors. v. Karnal Improvement Trust". This application was accepted by the Civil Judge (Senior Division), Karnal who ordered the petitioner-Trust to deposit Rs.20 lacs as compensation. The said order was challenged by the petitioner-Trust in Civil Revision 1307 of 1993 titled "Karnal Improvement Trust v. Ram Parshad and Ors. ". The Civil Revision however, was dismissed by this Court vide order dated 14.12.1993. This judgment stands reported in Karnal Improvement Trust Vs. Ram Parkash, . Against the aforesaid judgment, the petitioner-Trust filed Civil Appeal No. 5259 of 1996 before the Supreme Court which was allowed with the following observations:-

"Accordingly, it was set aside. Consequently, in law as on date there is no award in existence. Resultantly, the respondents cannot execute the decree until an award is made afresh in accordance with law. The appellant admittedly had deposited the amount pending revision in the High Court. In view of the fact that the award was set aside, any amount paid would be subject to the result in the award that could be made by the Tribunal under the Act."

12. Against the above order dated 21.3.1996, the respondent-claimants filed an application for review before the Supreme Court which was allowed vide order dated 17.8.1998 and the Civil Appeal No. 5259 of 1996 was restored to its original position. It came up for hearing before the Apex Court on 28.2.2002 when the following order was passed:-

"Heard counsel for the parties.

It is not disputed that Writ petition (C) No. 11579/89 entitled Karnal Improvements Trust v. State of Haryana, is still pending before the High Court of Punjab and Haryana. Learned counsel seeks adjournment of the case and to be listed after the decision in the aforesaid case. We feel that the request is reasonable.

Adjourned for six months.

In the meantime, it will be open to the appellant to request the Hon'ble the Chief Justice of the High Court for expeditious hearing of the matter. Learned counsel undertakes to inform the Registry as and when this writ petition is decided by the High Court."

13. Thereafter, CWP No. 11579 of 1989 filed by the Trust against the award of the Tribunal dated 21.2.1989 in the case of Ram Parshad, which had not been disposed of with the bunch of petitions disposed of earlier vide judgment dated 15.9.1989 in CWP No. 3489 of 1988, and had remained pending, came to be decided on 22.4.2002. The same was disposed of in terms of the order passed by the Apex Court on 9.5.1995 in Smt. Parkash Wanti's case (supra). A review application filed by the claimants against the said order is said to be pending.

14. Another fact which deserves mention is. that in the case of the petitioner, after the judgment of the learned Single Judge dated 15.9.1989 in CWP No. 3489

of 1988, the Tribunal had passed an award dated 20.3.1991 carrying out the directions of the learned Single Judge. The said award was challenged in CWP 7825 of 1991 which was dismissed by this Court on 5.6.1991. However, in view of the fact that the judgment of the learned Single Judge dated 15.9.1989 in CWP No. 3489 of 1988 was set aside by the Apex Court vide its order dated 11.9.1991, the award dated 20.3.1991 passed in pursuance of the judgment dated 15.9.1989 also stood automatically set aside.

It is in this factual background that the controversy raised in the present writ petition has to be resolved.

15. Shri Surya Kant, learned Senior Counsel for the petitioner, vehemently contended that while passing the impugned judgment in 17 references remanded to it by the Apex Court, the Tribunal was not justified in holding that the only matter required to be decided by it was with respect to the ownership and possession of the Phar land. The learned counsel pointed out that in its judgment dated 11.9.1991, the Supreme Court had reversed the findings of the High Court in respect of ownership of the Phar land and had remanded the matter to the Tribunal to re-examine the whole question and other connected matters relating to the properties. The parties were allowed to lead additional evidence and also urge all other contentions relating to title and possession of the properties, the counsel further pointed out that the other questions raised in the appeals were left open by the Supreme Court as is evident from the following observations :-

"We are not expressing any view on any of the questions raised in these appeals and they are left open".

The counsel contended that the very fact that the questions had been left open shows that the same had to be decided by the Tribunal while passing the order in remand. He has also furnished a copy of the appeal filed before the Supreme Court in Leela Wanti's case (supra) to show that various other questions had been raised before the Apex Court in the grounds of appeal Nos. (a) to (q). It was further contended that the apex Court vide its subsequent judgment dated 9.5.1995 in Smt. Parkash Wanti's case (supra) had held the awards of the Tribunal to be void. As a result of this finding, the said awards ceased to exist and all the references became pending. Thus, on 4.5.2002 when the impugned judgment was passed, there was no earlier award of the Tribunal and the whole matter had to be decided afresh as no apart of the earlier awards could possibly be given effect to after the same had been held to be void by the Supreme Court vide its judgment dated 9.5.1995.

16. Shri B.R. Mahajan, appearing on behalf of the respondents, on the other hand, supported the order of the Tribunal. According to him, the judgment of the Supreme Court dated 11.9.1991 clearly shows that the question ordered to be re-examined was only qua the title and possession of the Phar land and other connected matters thereto.

17. We have heard the rival contentions and gone through the records of the writ petition. The question for our consideration is as to what is the scope of remand as per the judgment of the Supreme Court dated 11.9.1991 and what is the effect of its subsequent judgment dated 9.5.1995.

18. After carefully perusing the two judgments, we are of the considered view that the Tribunal was not justified in observing that as per the order of the Supreme Court dated 11.9.1991, the only dispute for determination by it was qua the ownership and possession of the Phar land. It is no doubt true that the Supreme Court in its judgment dated 11.9.1991 had discussed the question of title and possession of Phar land and had held the matter had been decided by the High Court without proper consideration of the evidence. It is also true that it was on this ground that the whole question had been remanded to the Tribunal. However, while remanding the matter, the Supreme Court had duly taken note of the other questions raised in the appeal and had left them open. These questions were neither decided by the Apex Court nor disallowed on any other ground. The same had been left open by the Supreme Court without expressing its opinion. This clearly shows that such questions had been left open to be decided by the Tribunal in the remand proceedings. Had the Supreme Court intended otherwise, it would not have left these questions open. It would have either decided these questions or disallowed the same.

19. We are also of the view that the subsequent judgment of the Supreme Court dated 9.5.1995 leaves no manner of doubt that the Tribunal had to proceed with all the references de novo and pass fresh orders. The Supreme Court had held the awards to be void. As a result of this finding, the said award ceased to exist and all the references decided by those awards became pending. This position stands clarified by the Apex Court itself in its order dated 9.5.1995. The Apex Court has referred to some cases earlier remitted by it for fresh decision by the Tribunal which were pending. This observation clearly pertains to the cases remitted by it to the Tribunal vide its earlier order dated 11.9.1991. The Supreme Court had therefore directed the State Government of Haryana to constitute the Tribunal as per the Act and the Tribunal was directed to consider, decide and dispose of all the claims within a period of six months. This direction clearly applies to the cases which had been remitted earlier vide order dated 11.9.1991.

20. Since the Tribunal has failed to comprehend the proper scope of remand as per the judgments of the Apex Court dated 11.9.1991 and 9.5.1995 and has based the impugned judgment on one limited issue without taking into account various other questions raised before it, its award dated 4.5.2002 (Annexure P10) cannot be sustained.

21. In the result, the writ petition is allowed. The impugned award is set aside the Tribunal is directed to decide the references afresh and deal with all the questions raised before it by the parties. It is once again clarified that as a result of the order of the Supreme Court dated 9.5.1995 the earlier awards of the

Tribunal dated 20.1.1988 and 21.2.1989 do not exist in the eye of law and the Tribunal has to proceed with the references de novo. The parties are directed to appear before the Tribunal on 1.9,2003. It is expected that the Tribunal shall pass fresh award within a period of four months from 1.9.2003.

Sd/-

G.S. Singhvi, J.