
(2011) 09 P&H CK 0123
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 16745 of 1991

Mohd. Nazir and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 4, 6

Citation : (2012) 1 ILR (P&H) 993

Hon'ble Judges : M.M. Kumar, Acting C.J.; Gurdev Singh, J

Bench : Division Bench

Advocate : Arun Jindal, for the Appellant; J.S. Puri, A.A.G., Punjab, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.

(1) This order shall dispose of a bunch of petitions* because common questions of law are involved therein. For proper adjudication of the controversy in hand at the outset we propose to notice the brief facts and the prayer made by the petitioners in various petitions, which are as under:

CWP NO. 16745 OF 1991:

The Malerkotla Improvement Trust-respondent No. 3 framed a development scheme under the provisions of the Punjab Town Improvement Trust Act, 1922 (for brevity, "the 1922 Act"). The said scheme was sanctioned u/s 42(2) of the 1922 Act by the State of Punjab and notified vide notification dated 23.1.1987. The land measuring 26 Bighas 13 Biswas belonging to the petitioners was acquired. On 20.1.1989, the Land Acquisition Collector passed Award No. 1 of 1988-89 in respect of the acquired land (P-1). The petitioners claimed that on a portion of the acquired land, their residential houses with pucca construction were in existence but while announcing the award the Collector has not determined the amount of compensation in respect of superstructures. On

30.10.1991, the Collector passed an order directing the Executive Officer of the Improvement Trust, Malerkotla to inform the owners that an award with regard to the scheme would be announced on 13.11.1991 (P-2). On 13.11.1991, the Collector passed another award in respect of the superstructures, which was termed as "Supplementary Award" (P-3). The petitioners challenged order dated 30.10.1991 and award dated 13.11.1991 (P-2 & P-3), passed by the Collector-respondent No. 3 being without jurisdiction as the same has been passed after statutory period of two years from the date of publication of the declaration which was made on 23.1.1987 u/s 42(2) of the 1922 Act.

CWP NOS. 6848, 6849, 6850, 6851, 6852 AND 6896 OF 1993:

(2) In these petitions, the petitioner(s) have challenged notification dated 2.5.1989 issued u/s 4 of the Land Acquisition Act, 1894 (for brevity, "the 1894 Act") and the award dated 30.4.1992 passed by the Land Acquisition Collector, Colonisation Department, Punjab-respondent No. 2. The petitioners in these petitions purchased the land through various registered sale deeds and constructed their shops. On 2.5.1989, the respondent State of Punjab issued a notification u/s 4 of the 1894 Act that land is required for a public purpose, namely, for the construction of a new Mandi Township at Patran, Tehsil Samana, District Patiala (P-1). Eventually, the award in respect of the acquired land was made on 30.4.1992 (P-2). The grievance of the petitioner(s) in these petitions is that since no award in respect of the structures standing on the acquired land has been passed within the statutory period of two years, therefore, the acquisition proceedings are not sustainable and liable to be set aside. No supplementary award could have been passed by virtue of Sections 11 and 11A of the 1894 Act.

CWP No. 4754 of 1993

(3) In this petition, the petitioners have challenged notifications dated 23.2.1989 and 30.3.1989 (P-1 and P-2) issued under Sections 4 and 6 of the 1894 Act respectively. The respondent State of Punjab proposed to acquire land by issuing a notification dated 23.2.1989 u/s 4 for a public purpose, namely, for construction of Kandi Canal from 32325 RD Meters to 42762 RD Meters in Tehsil and District Hoshiarpur. A declaration u/s 6 was issued on 30.3.1989 acquiring the land of the petitioners. On 22.3.1991, the Collector passed four awards bearing Nos. 112-A, 112-B, 112-C and 112-D assessing the compensation of the acquired land (P-3 to P-6). Again the grievance of the petitioners is that no award in respect of the super-structures as well as Tube well etc. was passed, therefore, the acquisition proceedings are not sustainable and liable to be set aside.

CWP NO. 5356 OF 1996

(4) In this petition, the petitioners have challenged notifications dated 7.1.1994 and 8.8.1994 (P-1 and P-2) issued by the respondent State of Haryana under Sections 4 and 6 of the 1894 Act respectively. The land in question has been

acquired for the public purpose, namely, "66-KV Sub-Station, Mulana of the Haryana State Electricity Board". On 5.2.1996, the Collector passed an award in respect of the acquired land, the timber/fruit trees and the Kotha of the submersible tube well. However, the grievance of the petitioners is that no award in respect of the submersible tube well has been passed which was installed by them at a cost of "3,00,000/-". Therefore, the acquisition proceedings are not sustainable and liable to be set aside.

FUNDAMENTAL CHALLENGE:

(5) From the narration of above facts, it is clear that the fundamental challenge in these petitions is that separate award u/s 11A of the 1894 Act would not be permissible in respect of the land and super structure. In that regard, reliance has basically been placed on a Division Bench judgment of this Court rendered in the case of Sharanpal Singh versus State of Punjab (1). In the petitions challenging notification dated 2.5.1989 (supra) and award dated 30.4.1992 (supra), the acquisition has also been challenged on the ground that it would not serve any public purpose because the same very purpose stand already achieved as the petitioners in those cases had constructed shops, which were proposed to be constructed by establishing a New Mandi Township.

STAND OF THE RESPONDENT(S)

(6) The primary stand of the respondents in the written statement(s) is that the award in respect of the land and compensation thereof was paid in time. There was some delay in announcing the award with regard to super structure on account of the fact that the expert report regarding the value of the super structure was received late. The delay in announcing the award is unintentional and unavoidable. Thus, the respondents have defended the acquisition proceedings.

REFERENCE AND ANSWER BY THE FULL BENCH

(7) On the issue whether award in respect of superstructure has to be simultaneously, there were some conflicting views. The conflict was noticed on the basis of the judgment of Hon'ble the Supreme Court rendered in the case of Mohanji and another versus State of U.P. and others (2), and the Division Bench judgment of this Court rendered in Sharanpal Singh's case (supra). On 13.5.1992, when CWP No. 16745 of 1991 came up for consideration, the Division Bench while admitting the case to the Full Bench formulated the following questions:-

(a) Whether an award can be given with respect to land, keeping back decision with respect to super structures and whether the super structures are liable to be re-evaluated later?

(b) Whether a supplementary award can be given later in an award given earlier and if so, what will be its effect on the award given earlier? and

(c) When an award shall be an award for the purpose of Section 11A of the Land Acquisition Act?

(8) Answering the reference made to the Full Bench, their Lordships" have opined that the Division Bench judgments of this Court in Sharanpal Singh's case and Jagir Singh versus State of Punjab (3), and the Single Bench judgments rendered in the cases of Parduman Singh versus State of Punjab (4) and Dayal Singh versus State of Haryana (5), did not lay down the correct law. In view of the judgment of Hon"ble the Supreme Court in Mohanji's case (supra), the judgment in Sharanpal Singh's case (supra) has been specifically overruled. Accordingly, three propositions have been laid down by the Full Bench, which reads as under:

(a) The award can be given with respect to land keeping back the decision with regard to superstructures which can be evaluated later;

(b) The supplementary award can be given later evaluating the super-structures on the land regarding which an award has been given earlier and in such a situation the award given earlier evaluating the land only would not lapse;

(c) The award evaluating the land only will be a complete award for the purposes of Section 11A of the Land Acquisition Act.

DISCUSSION AND CONCLUSION

(9) Mr. Arun Jindal, learned counsel for the petitioner(s) has pointed out that apart from the issue of consolidated award in respect of the land and super structure, there are other issues for which the Full Bench had sent the cases back to the hearing bench. Accordingly, the matter has been listed before this Division Bench. According to learned counsel, the public purpose for acquiring the land was to establish a New Mandi Township and, in fact, that purpose stood achieved because the shops which have been built by the petitioners in the year 1988, already existed on the spot. Learned counsel has maintained that it was a futile exercise to raise the construction of similar shops under the garb of constructing a New Mandi Township.

(10) Mr. J.S. Puri, learned Additional Advocate General, Punjab has pointed out from the written statement that the petitioners have been treated as locally displaced persons and a plot has been reserved for them at the reserve price of "190/- per Square Yard. The land has now been fully developed by the Improvement Trust and a sum of "14.45 lacs has already been spent on the development. Only a small portion measuring 2 Bighas and 10 Biswas has been in possession of some of the petitioners and on that count the development has been held up. In any case, the argument raised by the learned State counsel is that merely construction of few shops would defy any planned, construction and development of a modern Mandi Township and, therefore, it is no argument that since the shops have already been constructed by the petitioners the public purpose to establish a New Mandi Township by constructing the shops would

stand achieved.

(11) Having heard learned counsel for the parties, we are of the considered view that the fundamental issue raised in these petitions was regarding the interpretation of Section 11A of the Act which stand already answered. The primary reliance on the judgment of Sharanpal Singh's case (supra) would not survive because the aforesaid judgment is overruled by Hon'ble the Supreme Court in Mohanji's case (supra), which has been duly noticed by the Full Bench. Accordingly, the issue is covered against the petitioners by the opinion expressed by the Full Bench and would not survive for consideration by us.

(12) The other issue raised by Mr. Jindal, learned counsel for the petitioners with regard to already constructed and existing shops would also not require any detail consideration on account of the fact that those shops are scattered and cannot be considered as part of the planned development. Any structure on the land, which is not in accordance with the plan prepared by the respondents, would not satisfy the public purpose. Accordingly, we also do not find any merit in the contention.

(13) For the aforementioned reasons, these petitions fail and the same are dismissed. If the award with regard to super structure has not been announced then the same shall now be done within a period of three months from the date of receipt of a certified copy of this order. A photocopy of this order be placed on the files of connected cases.