
(2006) 01 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11922 of 1996

Mohinder Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11(1), 11A, 12, 13A

Citation : AIR 2006 P&H 186 : (2006) 143 PLR 70 : (2006) 2 RCR(Civil) 349 : (2006) 1 RCR(Civil) 799

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : G.S. Bhatia, for the Appellant; G.S. Grewal, D.A.G for Respondent Nos. 1 and 2 and Rajan Gupta, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The judgment shall dispose of the aforesaid 13 writ petitions, which have been filed by the various landowners, whose land was acquired by the State of Punjab, vide notification dated 18.6.1991, issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act"). In all the petitions, the following common question of law has been raised:

Whether the Land Acquisition Collector has the power/jurisdiction to modify the Award made by him u/s 11 of the Act by reducing the amount of compensation awarded by making a fresh/supplementary Award after the period of two years prescribed u/s 11-A of the Act?

2. The State of Punjab, vide notification dated 18.6.1991 issued u/s 4 of the Act, had acquired 567 Kanals 1 Maria of land of village Malikpur, which was owned by various landowners including the petitioners, for the purpose of construction of Hydel Channel of S.Y.L. Ropar Power House. On the acquired land, various superstructures and fruit trees were existing. On 3.7.1992, notification u/s 6 of the Act was issued. Thereafter, notices u/s 9 of the Act were issued by the Land

Acquisition Collector-respondent No. 3 to the various landowners, including the petitioners. Pursuant to the said notice, the petitioners and other landowners submitted their respective claims for the land, superstructures and fruit trees standing on the acquired land.

3. The Land Acquisition Collector, after holding an enquiry and after obtaining the assessment from the Horticulture Department regarding the fruit trees, submitted the draft Award to the appropriate Government for approval u/s 11 of the Act. In the said draft Award, value of the fruit bearing trees standing on the acquired land of all the landowners was assessed as Rs. 21,15,763.30, on the basis of the report of the Director, Horticulture, Punjab, The Financial Commissioner approved the draft Award vide his office letter No. 1/84/94/LR-1/4316 dated 4.7.1994, in which it was specifically stated that "the price assessed by the technical Department for Tubewells, structures, trees are approved."

4. After the receipt of the letter approving the draft Award, the Land Acquisition Collector made Award No. 1 dated 4.7.1994, copy of which has been annexed with the petition as Annexure P-1. This Award was pronounced within the period of two years as envisaged u/s 11-A of the Act. This prescribed period was going to expire on 6.7.1994. The assessment of the fruit trees was made as Rs. 21,15,763.30. In the final Award, Annexure P-1, a clause was added that the amount assessed on account of fruit trees will be made over to the landowners after spot verification. If the number of fruit trees is found less than the number of assessed fruit trees, then proportionate value of compensation will be reduced.

5. When the petitioners went to collect the amount of compensation as per the Award Annexure P-1, they were disbursed the amount of compensation only on account of the cost of the land and superstructures, but no compensation was disbursed to them on account of cost of the fruit trees. Subsequently, on 19.10.1995, after the expiry of more than one year of the making of the Award, Annexure P-1, the Land Acquisition Collector issued a modified Award, copy of which has been annexed with the petition as Annexure P-3. In this modified Award, the compensation on account of fruit trees was reduced from Rs. 21,15,763.30 to Rs. 14,25,153.26, while stating that in Award No. 1 dated 4.7.1994, the assessment of Rs. 21,15,763.30 for fruit trees standing on the acquired land was made on the basis of the report of Director, Horticulture, Punjab dated 9.6.1994 and in the said Award, it was specifically stated that payment of compensation on account of fruit trees will be made after spot verification of the trees, and if the number of fruit is found less than the number of assessed fruit trees, then proportionate value of compensation will be reduced. It was further stated in the modified Award that now the Horticulture Department vide letter dated 22.2.1995 has reduced the compensation and assessed the value of the fruit trees standing on the acquired land as Rs. 14,25,153.26, therefore, it was ordered that compensation on account of fruit trees will be paid as per the fresh assessment. It was also clarified that 12%

additional amount u/s 23(1A) of the Act, which was given on the compensation awarded on account of fruit bearing trees, will not be paid from the date of notification, and the interest will be paid on the outstanding amount from the date of Award.

6. In these writ petitions the petitioners has challenged the aforesaid modification made by the Land Acquisition Collector on the ground that after making of the Award u/s 11 of the Act after approval from the appropriate Government, the Land Acquisition Collector became functus officio and he had no power and jurisdiction- to modify the Award and to revise the assessment of compensation on account of fruit trees and further to withdraw the 12% additional compensation awarded u/s 23(1A) of the Act by making a supplementary Award.

7. In the written statement, filed on behalf of respondent No. 3, a preliminary objection has been taken that since u/s 18 of the Act, the petitioners had already sought a reference against Award No. 1, including vide judgment dated 14.9.1999, passed by Additional District Judge, Rupnagar, against which Regular First Appeal is pending in this Court, therefore, the writ petitions filed by the petitioners are not maintainable. Regarding the averments made in the petitions, it has been stated that in Award No. 1 dated 4.7.1994, the question of assessment of compensation in respect of fruit trees was left open and in view of that clause, spot verification was made by the Director, Horticulture, Punjab, who found that while making assessment of the fruit trees, many irregularities were committed, therefore, compensation on account of fruit trees was reduced on the basis of the report given by the Horticulture Department vide letter dated 22.2.1995. The reduction of compensation vide the modified Award was legal and justified. Since in the main Award dated 4.7.1991, the question of assessment in respect of fruit trees was left open, therefore, the fresh assessment was made after spot verification and accordingly, compensation amount of the fruit trees was reduced. It has been stated that u/s 13-A of the Act, the Collector is empowered to make necessary correction in the Award or error arising therein either on his own motion or on the application of any person interested or of a local authority. In the written statement, it is not the case of the respondent that the amount of compensation on account of fruit trees was reduced on account of less number of fruit trees found on the spot. Even in the modified Award, it has been mentioned that the number of trees was same, but in the previous report submitted by the Horticulture Department, assessment was not made correctly.

8. I have heard the learned Counsel for the parties and have gone through the record of the case.

9. I have considered the argument of learned Counsel for the respondents regarding the maintainability of the present petitions in view of the fact that against Award No. 1 dated 4.1.1994, a reference u/s 18 of the Act was sought by the petitioners and the same was declined by Additional District Judge, Rupnagar vide judgment dated 14.9.1999, against which Regular First Appeal is pending.

From the perusal of the judgment dated 14.9.1999, it appears that the petitioners sought reference against Award No. 1, claiming enhancement of compensation with regard to the fruit bearing trees. No reference was sought by the petitioners against the modified Award dated 19.10.2005. Therefore, it cannot be said that the matter is subjudice in the Regular First Appeal pending in this Court. In the said appeal the only question is whether the landowners are entitled for further enhancement of the compensation for the fruit trees. Even if their claim is not accepted, they are entitled for compensation in accordance with Award No. 1 dated 4.7.1994. In that appeal, the issue of reduction of the amount of compensation of fruit trees is not in question, The only question is regarding further enhancement of the compensation. Therefore, on account of pendency of the said RFA, in my opinion, it cannot be said that the present writ petitions are not maintainable. In these petitions, the petitioners have challenged the order dated 19.10.1995, vide which the Award dated 4.7.1994 has been modified after one year of its passing being totally without jurisdiction.

10. In these cases, acquisition of the land of the petitioners and other landowners along with superstructures and fruit trees standing thereon has not been disputed. It is also not disputed that the Land Acquisition Collector held an enquiry and considered the claim of the landowners regarding their land, fruit trees and superstructures and also obtained assessment report of the fruit trees from the Horticulture Department. Thereafter, he prepared a draft Award which was sent by him to the Financial Commissioner for approval. The Financial Commissioner while exercising the powers of the government, approved the said draft Award while specifically mentioning that "The price assessed by the Technical Department for Tubewells, structures, trees are approved." Thereafter, the Award was made by the Collector. It was duly signed and announced. Section 11-A of the Act provides that the Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall be lapse. In these cases, Award No. 1 dated 4.7.1994 was passed within the period of two years, as envisaged u/s 11-A of the Act. Thus, the Land Acquisition Collector, after making of the Award within the prescribed period, became functus officio. After making of the award u/s 11 within the prescribed period, the Land Acquisition Collector has no jurisdiction or power to modify the Award. Section 12 of the Act provides that an award made shall be final and conclusive evidence, as between the Collector and the persons interested of the true area and value of the land and apportionment of the compensation among the persons interested.

11. Section 13-A(1) only empowers the Collector to correct any clerical or arithmetical mistakes in the award or errors arising therein. Section 13-A(1) reads as under: -

13A. Correction of clerical errors, etc.- (1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required

u/s 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein on his own motion or on the application of any person interested or a local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making, a representation in the matter.

The aforesaid section gives power to the Land Acquisition Collector to correct the clerical or arithmetical mistakes within six months from the date of the Award and that is before making the reference u/s 18 of the Act. It is also mandatory that before making such correction, which is likely to affect prejudicially any person interested, a reasonable opportunity should be given to make a representation in the matter. In this case the modification in Award No. 1 was made after six months.

12. Counsel for the respondents submitted that the Land Acquisition Collector has the power u/s 13-A of the Act to correct any clerical or arithmetical mistakes in the Award or errors arising therein at his own motion. In exercise of the said power, the subsequent modification was made by him vide order dated 19.10.1995, Annexure P-3. They submitted that the modification/clarification in the main Award were to be made because there were irregularities in the earlier report dated 9.6.1994 given by the Director, Horticulture Department, Punjab. Subsequently, on spot verification, those irregularities were detected and a fresh report dated 22.2.1995 was given by the Horticulture Department. Keeping in view the fresh report, compensation on account of the fruit trees was reduced from Rs. 21,15,763 to Rs. 14,25,153.26.

13. I do not find any substance in the aforesaid submission of learned Counsel for the respondents. The modification made in the main Award, in my opinion, cannot be taken as correction of any clerical or arithmetical mistake in the Award or error arising therein. Once the original Award is signed by the Land Acquisition Collector, it cannot be re-opened later, except for the limited purpose of correcting any clerical or arithmetical mistake in the award or error arising therein. A clerical or arithmetical mistake in the Award means that some mistake has been made with regard to the totaling and calculation of the amount. This section does not empower the Land Acquisition Collector to make fresh assessment or to change the assessment already made without there being any clerical or arithmetical mistake in the Award or error arising therein. It must be a mistake or error amenable to clerical correction only. It must not be a mistake or error which calls for rectification by modification of the conscious adjudication in the issue involved. In these cases, the draft Award was prepared by the Land Acquisition Collector. The assessment of the value of the fruit trees was made on the basis of the report of the Director, Horticulture. A specific clause was added in the Award that the amount assessed on account of fruit trees will be made on the landowners after spot verification. If the number of fruit trees is found less

than the number of assessed fruit trees, then proportionate value of compensation will be reduced. Therefore, the only thing left for spot verification was the counting of fruit trees. In case, the proportionate amount was to be reduced, but the said clause did not authorise the respondents to make fresh assessment of the value of the fruit trees by different persons and then come to a different conclusion. Admittedly, in the written statement as well as in the impugned order, it is not the case of the respondents that the compensation amount of fruit trees was reduced on account of less number of fruit trees found on the spot. The assessment has been revised and the amount has been reduced because of the alleged irregularities committed by the Horticulture Department while making the assessment. In my opinion, such modification/revision in the final Award, which was made by the Land Acquisition Collector after making the Award u/s 11 of the Act is not permissible in exercise of the power conferred u/s 13-A. The nature of inquiry" u/s 11 which statutorily requires the interested parties of being heard and taking a decision based on relevant factors by the Collector shows that the inquiry contemplated under this Section is quasi-judicial in nature, and the said satisfaction as to the compensation payable should be based on the opinion of the Collector. Section 11 has not provided an appeal to any other authority as against the opinion formed by the Collector in the process of inquiry conducted by him. What is provided under the proviso to Section 11(1) is that the proposed Award made by the Collector must have the approval of the appropriate Government or such officer as the appropriate Government may authorise in that behalf. Even if the appropriate Government is aggrieved by the fixation of compensation by the Collector, it can before approving the Award can exercise its power u/s 15-A of the Act, but once the Award is made after the approval, the same becomes final and the said Award cannot be touched by the Collector or even by the appropriate Government. After making the Award, the Land Acquisition Collector became functus officio. Even u/s 13-A of the Act, he can correct clerical or arithmetical mistakes in the Award or errors arising therein and that too within six months of the making the Award, where no reference u/s 18 is made by him. The Collector, even has no power to correct the clerical error after the expiry of six months.

14. In the order dated 19.10.2005, the Land Acquisition Collector has also held that, the landowners will not be entitled for 12% additional amount awarded to them u/s 23-A of the Act on the ground that the assessment of fruit trees was made in the year 1995 on the basis of age of the fruit plants, therefore, there is no logic to pay the additional amount to the landowners. This modification in the main Award made by the Land Acquisition Collector is also not sustainable and the same also does not fall in the course of clerical or arithmetical mistake. u/s 23(1A) of the Act, 12% per annum additional amount is to be paid on the market value assessed for the period commencing on and from the date of the publication of the notification u/s 4, Sub-section (1) till date of Award of the Collector or the day of taking possession thereof, whichever is earlier. Thus, under the aforesaid provision, the landowners are entitled for the said additional

amount. Learned Counsel for the respondents could not point out any ground on which the additional amount can be denied to the landowners. Thus, in my opinion, the impugned order dated 19.10.1995 is totally without jurisdiction.

15. In view of the aforesaid discussion, all these writ petitions are allowed, the impugned order dated 19.10.2005, Annexure P-3, is set aside and the respondents are directed to pay the compensation to the petitioners for their acquired fruit trees in accordance with the final Award dated 4.7.1994, Annexure P-1.