(2014) 10 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 1710 of 2014 (O&M)

Municipal Corporation, Ludhiana APPELLANT

Vs

Surinder Kumar and Others RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:
Punjab Municipal Corporation Act, 1976 — Section 170, 171

Citation : (2015) 1 RCR(Civil) 751

Hon'ble Judges : Satish Kumar Mittal, J;Deepak Sibal, J

Bench : Division Bench

Advocate : Salil Sagar, Senior Advocate and Sankalp Sagar, Advocates for the Appellant

Judgement

Deepak Sibal, J.—Municipal Corporation, Ludhiana has filed the instant Letters Patent Appeal under Clause X of Letters Patent against the order dated 24.07.2014 passed by the learned Single Judge of this Court, whereby the writ petition (CWP No. 15967 of 2012) filed by the legal heirs of Hari Chand (respondents No. 1 to 6 herein), has been allowed with costs. The brief facts of the case leading to the filing of the present appeal are that Hari Chand Sood (predecessor in interest of the respondents and hereinafter referred to as the ''landowner'') had purchased a plot measuring 580 sq. yards comprising in khasra No. 61/22, Dhandari Kalan, G.T. Road, Ludhiana vide registered sale Deed No. 8977 dated 27.10.1983. After purchase of the land, he had constructed three pucca rooms on the same and then had started his business from there. In the year 2001, the appellant-Corporation started constructing Dhandari railway flyover at Ludhiana and for that, utilized the aforesaid land of the landowner. The utilization was without following any procedure meant for acquiring the land and without fixation of and payment of compensation as required by law. Only an assurance had been given to the landowner that he would be given a plot of equal size and equal price on the G.T. Road in lieu of utilization of his plot. The construction of the flyover continued for about six years and during this period the landowner was not allotted any plot as promised though there was correspondence to allot adjoining land belonging to the Municipal Corporation to him. The matter with regard to grant of alternate land to the landowner was taken up by the Finance Committee of the appellant-Corporation which further constituted a sub committee to look into the matter. The sub committee took the following decision in its meeting held on 23.02.2006:-

"The subject cited case has been considered. The Municipal Corporation has been constructing a Flyover at Dhandari and as per the office report the land of private owners comes under it, the Khasra Number of which is 61/22 in village Dhandari. This land is situated on G.T. Road. A little ahead of this land on the G.T. Road, the land of Municipal Corporation is situated, the khasra numbers of which are 22/4, 4 min and 22/5/1 in Village Dhandari Khurd. The market value of both these lands is almost equal. Therefore, the committee as per the report of the office, has recommended to give land of Municipal Corporation in lieu of the land of the private owners coming under the construction of flyover. This land will be given at the same distance."

2. The above proposal was sought to be put up before the Commissioner through Joint Commissioner (K) of the appellant Corporation. The Joint Commissioner in his note dated 11.09.2006 asked the office to prepare a site plan of the alternate land to be allotted and to enquire the Collector rates of both the land which had been utilized and the alternate land which was to be given. When this note was put up before the Commissioner he referred the matter back for examining the issue on the legal side and he was advised that such land can be taken through negotiations on a rate equivalent to the rate of the land which had been utilized. The matter was then referred to the Deputy Commissioner so that rate of land of different areas in Ludhiana City is made available. It was found that the rates of the land falling in the areas of Dhandari Kalan and Dhandari Khurd in Ludhiana City were the same. These areas were also quite close by. The entire matter was then taken up the appellant-Corporation and resultantly a resolution dated 27.11.2009 was passed which was a clear departure to the entire process undertaken earlier. As per this resolution, no land in exchange was to be given to the landowner but it was decided that he be given compensation. Since neither alternate land nor compensation was given to the landowner, he was forced to knock doors of this Court through CWP No. 9846 of 2011, which was disposed of vide order dated 30.05.2011 directing the appellant-Corporation to consider the landowner''s representations and take an appropriate decision thereupon in accordance with law within two months. Still, no compensation was disbursed. Even on the filing of a contempt petition by the landowner, the appellant-Corporation neither gave alternate land nor paid compensation leading to the filing of the writ petition which was allowed by the learned Single Judge vide order dated 24.07.2014 which is impugned in the present appeal by the appellant.

3. The facts in the present case speak for themselves. The land of the respondents was utilized by the appellant-Corporation but for the same neither

he was given alternate land nor was he paid any compensation. In fact, no compensation was even assessed as per procedure prescribed by law. The respondents had thus, been deprived of his property without payment of compensation or without following any process established by law. The action of the appellant-Corporation was also in contravention of provisions of The Punjab Municipal Corporation Act, 1976 (hereinafter referred to as the ''1976 Act''). The relevant provisions of the 1976 Act i.e. Sections 170 and 171 are reproduced below:-

"170. Acquisition of immovable property by agreement:- whenever the Corporation decides to acquire any immovable property, for the purpose of this Act, the Commissioner shall acquire such property on behalf of the Corporation by agreement on such terms and at such price as may be approved by the Corporation.

171. Procedure when immovable property cannot be acquired by agreement:- Whenever the Commissioner is unable to acquire any immovable property, under Section 170 by agreement, the Government may at the request of the Commissioner acquire the same under the provisions of the Land Acquisition Act, 1894 and on payment by the Corporation of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Corporation."

4. From the above reproduced Sections, it is clear that the appellant-Corporation has acquired and utilized immovable property of the landowner without following any procedure including the procedure established by the Act which governs the appellant-Corporation. No agreement as contemplated under the 1976 Act has been placed on the record.

5. The stand of the appellant-Corporation that a cheque had been sent to the respondents which was not accepted is only to be considered for being rejected. As already observed above, no procedure was followed to calculate the amount of compensation to be paid and therefore, merely sending a cheque of amount calculated unilaterally at the whims of the appellant-Corporation cannot be considered to be payment of compensation in furtherance of any procedure known to law for payment of compensation for the acquiring land. Now the question arises what relief is to be given to the respondents. Admittedly, the land of the respondents have been utilized for which no compensation has been paid. The land was utilized in the year 2001 and 13 years have elapsed thereafter. Till date, no compensation as calculated in accordance with law has been paid. That being the position on facts, the learned Single Judge rightly applied to the present case, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by observing as under:-

"In the present case, no acquisition procedure was followed nor the possession has been taken as per law. Land has been used in unauthorized manner without complying with the provisions of any of the Acts, which were existing at the relevant time. Even no award has been passed. There was no opportunity for the petitioners to represent with regard to the determination of the compensation which was to be awarded. On this ground proceedings are required to be initiated for determining the compensation by authorities in view of law laid down by Hon''ble Supreme Court in Harakchand Minirimal Solanki (supra) as well as in Union of India (UOI) and Others Vs. Shiv Raj and Others, ."

We concur with the above view taken by the learned Single Judge.

Resultantly, the present appeal having no merit is dismissed but with no order as to costs.