(2008) 12 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4303 of 2004

Rajinder Kalia and another APPELLANT

Vs

State of Punjab and others RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Citation : (2009) 5 RCR(Civil) 757

Hon'ble Judges : M.M.Kumar, J and Jora Singh, J

Advocate : Mr. Girish Agnihotri, Sr. Advocate with Mr. Arvind Seth, Advocate. Mr. B.S. Dhillon, DAG Punjab and Mr. M.S. Rahi, Advocate., Advocates for appearing Parties

Judgement

M.M.Kumar, J.

1. The instant petition filed under Article 226 of the Constitution prays for issuance of direction to the respondents to return the land in question to the petitioners which is alleged to have been taken over by the Jalandhar Improvement Trustrespondent No. 2 (for brevity ''the Trust'') for implementation of 51.5 Acres Scheme at Jalandhar in the year 1971. The precise allegation is that the petitioners have been deprived of their land measuring 6 kanals 3 marlas falling in khasra No. 15547. The land was acquired by way of exchange vide agreement dated 3.3.1972 (Annexure P.1A) between the Trust and a number of other land owners which has been duly signed by the Trust and the petitioner Rajinder Kalia son of Hargobind Kalia. The petitioner and his brother Narinder Kumar Kalia, however, acquired some proprietary rights in more land in July, 1973 out of khasra No. 155437 which was never part of exchange deed and accordingly the same could not be exchanged or purchased by negotiation by the Trust. Accordingly, the petitioner made a representation on 24.11.1978 seeking compensation of land comprised in khasra No. 155347 apart from land measuring 12 kanals 14 marlas. The petitioners claimed that in August, 1974 a resolution by the Board of Trustees was passed to offer the petitioners alternative land in respect of their land comprised in khasra No. 155347. As no alternative

land has been allotted the petitioner has raised demand for alternative land and requested for payment of compensation in respect of 6 kanals 3 marlas land. The last para of the representation reads thus :

"As we are no longer interested to get alternative land for the time being, we hereby withdraw our previous requests for that and instead request you to kindly give us compensation for the said area of 6 K3 M at an early date and oblige. We are enclosing herewith a fard jamabandi for your ready reference. If adequate price as prevailing in the year 1974 is not paid to us, we shall be constrained to take appropriate legal measures."

2. Similar representations were made on 10.2.1984 (Annexure P.4), 10.2.1992 (Annexure P.5) and 26.7.1993 (Annexure P.6). The respondent Trust intimated the petitioner on 4.10.1993 that their land was not acquired and no award was announced (Annexure P.7). However, the petitioner continued to make representations for payment of compensation (Annexures P.9, P9 A, P.10, P.11, P.12 and P.13). The matter was taken by the Executive Officer of the Trust on 31.10.2002 (Annexure P.14) by addressing a letter to the Government wherein it was stated that a sub committee headed by the Deputy Commissioner for the District may be constituted. The report in respect of possession after the due approval of the Government may be sent to the Trust so as to make the payment of due compensation to the petitioners.

3. Eventually, the Government passed an order which is subject matter of challenge in this case on 27.5.2008 concluding that the petitioner became owner of the land on 20.7.1973 when mutation No. 14312 dated 20.7.1973 was sanctioned on the basis of sale deed No. 7673 dated 13.7.1973. A development scheme known as 51.5 acre scheme was notified in the year 1965 and Shri Rajinder Kumar brother of Narinder Kalia was also the owner of the land measuring 6 kanals 11 marlas at the time of exchange deed dated 3.3.1972. The land of the petitioners Narinder Kumar and Rajinder Kumar sons of Hargobind Kalia was also acquired by a different six exchange deeds. Being fully aware of the development scheme, he purchased 6 kanals 3 marlas out of khasra No. 15547 on 13.7.1973. The trust did not challenge the mutation and finding no alternative it decided to pay compensation to the petitioner. The operative part of the order reads thus :

"... The facts briefed by Jalandhar Improvement Trust is that the mutation was not challenged and there is no alternative but to accommodate the applicants by way of paying compensation @ Rs.330.00 per marla alongwith 12 percent interest and 30% solatium. The rate of compensation is justified by average rate calculated by the Land Acquisition Collector for the year 1973 74. As on above, it is clear that contention to pay compensation @ 33.00 per marla is liable to be accepted alongwith 12% interest and 30% solatium. I have carefully gone through the PTI (Utilisation of land and allotment of plots) Rules 1983 alongwith presentation of the Trust. It is transpired that applicants become owner in the year 1973 and were aware about the development of scheme. On the other hand

PTI Act (Utilisation of Land and Allotment of Plot) Rules, 1983 came into existence in the year 1983 and came into force in the year 1983. The contention of the applicant is to rely upon these rules is not justifiable. Hence portion of request for providing land cannot be considered and the same is declined.

As on above decision, Jalandhar Improvement Trust be directed to pay the compensation @ Rs. 330 per marla from 20.7.1973 to till date alongwith 12% interest and 30% solatium. The applicants may be informed accordingly."

4. We have heard learned counsel for the parties at a considerable length and have perused the paper book with their able assistance. A perusal of representation dated 24.11.1978 shows that the petitioners had handed over possession of the land to the Trust in good faith on the understanding that alternative plots were to be given to them. The representation further states that neither any alternative plot was given nor compensation was paid. It was further revealed by the petitioner that they were not interested in getting alternative plots for the time being and withdrew their previous requests in that behalf. Accordingly a request was made for payment of compensation for the area 6 kanals 3 marla. The adequate price as prevailing in the year 1974 was demanded. The Government in the impugned order has assessed the value of the property at the average rate calculated by the Land Acquisition Collector for the year 197374 which worked out at Rs. 330/ per marla. Accordingly compensation has been paid alongwith 12 percent interest accruing from 20.7.1973 till the date of payment. Thirty percent solatium has also been awarded to the petitioner.

5. The impugned order does not suffer from any legal infirmity warranting admission of the petition because in para 2 of the reply it has been category stated that the petitioners were given an alternative site in the revenue estate of Jalandhar and for the remaining portion of the property the government decided to pay an amount of Rs. 40590/ as compensation for the land acquired through negotiation with the petitioner in the year 1971 and that the petitioners were not owner of the land measuring 6 kanal 3 marlas. They acquired proprietary rights in the year 1973. It was in that situation that no compensation could be offered to the petitioner in the year 1971 at the time of execution of exchange deed. It has further been pointed out that compensation at that stage was offered to them but they did not come forward to receive the same and failed to claim compensation for a number of years. It is also evident that the petitioners themselves have asked for grant of compensation in all the representations made in the year 1978 which appears to have been offered to them but not accepted.

6. The only argument raised by the counsel for the petitioner is that respondents cannot calculate the compensation in the manner as reflected in the impugned order. According to the learned counsel only course open to them was to issue notification under Section 36 of the Punjab Town Improvement Act, 1922 and then seek sanction of the same from the Government under Section 42 of the Act. It was thereafter that procedure for announcing the award should have been

adopted. Learned counsel has maintained that according to this procedure the Government would have got compensation with reference to the date of notification issued under Section 36 of the Act which is equivalent to Section 4 of the Land Acquisition Act, 1894. The contention raised by the learned counsel does not require any detailed consideration in view of the admission made by them in the representation dated 24.11.1978 (Annexure P.3) wherein it is conceded that they had handed over the possession of the land to the Trust on the understanding that alternative land was to be given and eventually even the claim for alternative land was given up. In the last para of the representation the petitioners have withdrawn all other requests for allotment of alternative plot and has confined their request to payment of compensation at the prevailing rate in the year 1974. In the peculiar facts and circumstances of this case the normal procedure of acquisition is not applicable. The impugned order Annexure P.17 does not suffer from any legal infirmity and the writ petition is liable to be dismissed.

For the reasons aforementioned this petition fails and the same is dismissed.

