
(1994) 01 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11133 of 1991

Sadhu Ram

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 27-01-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 28, 4, 4(1)

Citation : AIR 1995 P&H 325

Hon'ble Judges : S.K. Jain, J;G.R. Majithia, J

Bench : Division Bench

Advocate : S.K. Goyal, for the Appellant; Kamal Sharma, A.A.G. and P.S. Kadian, DAG, for the Respondent

Judgement

1. The petitioner has assailed the order of the Land Acquisition Collector, Urban Estate Department, Panchkula contained in Memo No. B-E/E/P/90/A-4879, dated August 21, 1990, rejecting his application under S. 28-A of the Land Acquisition Act, 1894 (for short the Act) in this petition under Articles 226/227 of the Constitution of India.

The facts :--

2. The petitioner was owner of 1/2 share in land measuring 19 kunals situate in village Patti Mehar, Had Bast No. 58, Tehsil and District Ambala and comprised in Khewat, Khatauni Nos. 128 169, 151/265, 414,599, 684/772 and Khasra Nos. 270, 273/269/1, 258/1/302/1 and 301/1. The land was acquired by the Govt. of Haryana vide notification dated January 30, 1973 issued under S. 4 of the Act. It was followed by a declaration under S. 6 of the Act issued vide notification dated June 23, 1973. The Land Acquisition Collector gave the award on September 21, 1973. The petitioner did not file an application under S. 18 of the Act for making reference to the Land Acquisition Court. Other land-owner-claimants filed application for reference under S. 18 of the Act, which was decided by the Land Acquisition Court on April 29, 1980. The award of the Land Acquisition Court was challenged in R.F.A. No. 1642 of 1980 (Kharaiti Lal v. State of Haryana) and

other connected appeals. The same were decided by this Court on July 30, 1992.

3. The petitioner moved application dated November 26, 1989 under S. 28-A of the Act as amended by Act No. 68 of 1984 for re-determination of the amount of compensation on the basis of the award of this Court. The application was declined by the Land Acquisition Collector vide order dt. August 21, 1990 on the ground that the petitioner ought to have availed his remedies in this Court.

4. The learned counsel for the petitioner submits that the petitioner, is entitled to the benefit of enhanced compensation in view of S. 28-A of the Act as amended by Act No. 68 of 1984 and in support of his submission he placed reliance on the following judgments of this Court and the Supreme Court :--

(1) Nathi Ram v. The State of Haryana (1990) 2 Rev LR 78 (Punj & Har);

(2) The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others, ;

(3) Ram Lal v. Gurbachan Singh (1991) 1 Rev LR 330 (Punj & Har);

(4) Lila Krishan v. The Land Acquisition Collector, (1991) 2 Rev LR 39 (Punj & Har);

(5) Ram Samp v. State of Haryana (1993) 1 Rev LR 249 (Punj & Har).

5. The question raised in this writ petition is no more res integra. It was authoritatively settled by a Division Bench of this Court in C.R. No. 73 of 1991 (Smt. Bhagti v. State of Haryana), decided on August 18, 1992, and the Bench arrived at the following conclusions :--

"(1) Section 28-A as inserted in the Act by the Amending Act has retrospective operation from April 13, 1982.

(2) Under this provision, if the amount of compensation awarded by the Collector under S. II of the Act is enhanced by the Court in a reference under S. 18, the persons interested in other land acquired by the same notification under S. 4(1), who did not make an application to the Collector under S. 18, can move written application to the Collector within three months from the date of the award of the Court for re-determination of the amount of compensation payable to them on the basis of the amount of compensation awarded by the Court.

(3) The re-determination has to be made on the basis of the award made under Part III which refers to the one made under S. 23.

(4) Any person who does not accept the award by the Collector under S. 28A of the Act may, by a written application, move the Collector that the matter be referred for determination to the Court under S. 18 of the Act.

(5) Where more than one award with regard to the same acquisition has been rendered by the Court, the land owner can take advantage of the award which is more beneficial and limitation will start from the date of the award.

(6) The award of the Court" means the decision of the Court under S. 23 of the Act to whom reference was made under S. 18."

All the judgments referred to by the learned counsel for the petitioner except in Ram Sarup's case (1993 (1) Rev LR 249) (Punj & Har) (supra) were dealt with by the Bench in ;the judgment rendered in Smt. Bhagti's case. The judgment in Ram Sarup's case has no relevance to the facts of the instant case. The land in that case was acquired vide notification dated June 23, 1976. The Land Acquisition Court and this Court enhanced the compensation. The petitioners did not make any application under S. 18 of the Act and sought the benefit of the enhanced compensation under S. 28-A of the Act as amended by Act No. 68 of 1984. The Land Acquisition Collector accepted the application and allowed the benefit of enhanced compensation as was allowed by the Land Acquisition Court. The order of the Land Acquisition Collector was challenged in this Court principally on the ground that the Land Acquisition Collector ought to have allowed the enhanced compensation as was allowed by this Court in appeal. This Court held that the Land Acquisition Collector should have sent the case to the Land Acquisition Court to decide as to at what rate the land-owner-claimants were en-titled to the enhanced compensation. The learned single Judge did not lay down as a matter of law that the claimants were entitled ,lo the enhanced compensation as was allowed by this Court in first appeal. Even if it is construed that the learned single Judge had intended that the claimants were entitled to the enhanced compensation as was allowed by this Court, the judgment runs counter to the judgment rendered by a Division Bench of this Court in Smt. Bhagti's case (supra), The judgment in Smt. Bhagti's case was not brought to the notice of the learned Judge. Since it runs counter to the view taken by the Division Bench in Smt. Bhagti's case, the same is overruled.

6. The petitioner in the instant case did not move the application under S. 28-A of the Act to the Land Acquisition Collector within three months from the date of the award rendered by the Land Acquisition Court, he is not entitled to the benefit of the provisions of S. 28-A of the Act as inserted by the Amending Act No. 68 of 1984 in view of the ratio of the judgment in Smt. Bhagti's case.

7. For the reasons stated above, the writ petition fails and is dismissed.

8. Petition dismissed.