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**(1981) 04 P&H CK 0013**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 1403 of 1980**

Sohan Lal

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

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**Date of Decision :** 23-04-1981

**Acts Referred:**

Constitution of India, 1950 — Article 32  
Punjab Town Improvement Act, 1922 — Section 58(1), 59, 60, 60(1), 60(2)

**Citation :** AIR 1981 P&H 346 : (1982) 1 ILR (P&H) 55

**Hon'ble Judges :** S.S. Sandhawalia, C.J.; M.M. Punchhi, J

**Bench :** Division Bench

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## Judgement

This Judgment has been overruled by : Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt) (Dead) and Another, (1995) 5 JT 151 : (1995) 3 SCALE 487 : (1995) 5 SCC 159 : (1995) 1 SCR 136 Supp

S.S. Sandhawalia, C.J.—Whether the mere absence of one or both the assessors at the time of rendering the award by the President of the Tribunal u/s 65 of the Punjab Town Improvement Act, 1922, would vitiate the same is the significant question which forms the common link in these six connected civil writ petitions admitted to a hearing by the Division Bench.

2. Since the question aforesaid is pristinely legal, and we do not propose herein to delve into merit of each case it suffices to make a reference albeit briefly to the facts in C. W. 1403/1980. The petitioner was the owner of some land situated in Ambala City which was acquired by the respondent-improvement Trust for the development Scheme No. 12. Consequent thereto the Collector rendered his award in which he assessed compensation at the rate of Rs. 10 per square yard. The petitioner and others whose land had been similarly acquired made application u/s 59 of the Punjab Town Improvement Act (herein called the Act) read with Section 18 of the Land Acquisition Act for referring the matter to the tribunal constituted under the Act for enhancement of the compensation awarded. These application were resisted by the Trust and on the pleading of the

parties the Tribunal framed the necessary issues on the 17th of January, 1978. It deserves passing mention that similar application made by other person whose lands had been acquired for Scheme No. 12 as also for Scheme No. 5 were also before the Tribunal and all the applications were consolidated for trial and the entire evidence was recorded in the case of the petitioner. After duly recording the evidence the President of the Tribunal rendered the President of the Tribunal rendered a detailed award on the 21st of December, 1979, whereby he enhanced the compensation for the land acquired for Scheme No. 12 to Rs. 14/- instead of Rs. 10/- and similarly for Scheme No. 5 to Rs. 17/- instead of Rs. 13/- awarded by the Collector. The petitioner inter alia challenged the aforesaid award of the Tribunal on the ground that the two assessors to the President did not participate in the trial of the reference at all and therefore the entire proceedings and in particular the award rendered by the President of the Tribunal stands wholly vitiated.

3. Though the pleadings on the point are slightly ambivalent it was the admitted case of the parties before us that in the present case two learned Advocate Mr. V. K. Gupta and Mr. Sukhnandan Singh has been named as assessors to the President of the Tribunal u/s 60 of the Act. Nor was it in any dispute that notice were duly sent and served on both of them by the President of the Tribunal but none of them chosen to participate in the proceedings at any stage. It is further the common case that there is no provision in the Act or the rules which compels the attendance of the assessors at the hearings of the Tribunal.

4. Relying basically on Section 58 and sub-section (1) of Section 60, Mr. Jain, on behalf of the petitioner, contended that the Tribunal herein shall consist of the President and two assessors. There from it was sought to be deduced that the final award u/s 65 must also be rendered by all the three persons constituting the Tribunal and in any case, so far as findings u/s 65(1)(a) are concerned. These must be of the body as a whole. Consequently it was contended that in the present case the award having been admittedly rendered by the President alone the same suffered from an inherent lack of jurisdiction and was therefore, either non est or at least vitiated beyond repair.

5. On the first flush and de hors the material statutory provisions of the Act, the aforesaid contention has an initial modicum of plausibility. However, a close and in depth examination of the section of the Act relevant to the point seem to be a clear pointer to the legislative intent that the pivot of the legislative intent that the pivot of the Tribunal is its president whilst its two assessors are wholly ancillary. Whilst the participation of the assessors in the proceedings may be desirable, their presence is in no way mandatory or crucial to its proceedings. However, this conclusion is not derived from a single or solitary provision of the Act but from a variety of them which when viewed as a schematic whole clearly indicates that the absence of the two assessors even at the time of rendering the award was not designed to be fatal to the proceedings.

6. Now what first meets the eye in this context are the provision of Section 58

and 60 with regard to the constitution of the Tribunal. The former provision lays down that for the purpose of performing the function of the Court, in reference to the acquisition of land for the Trust under the Land acquisition Act, 1894, a Tribunal Shall be constituted. The relevant p[art of Section 60 to which reference is necessary is as follows:-

"60. (1) The tribunal shall consist of a president and two assessors.

(2) The president of the tribunal shall be a person,--

(a) Who is qualified for appointment as a Judge of the High Court of Punjab and Haryana; or

(b) Who has held the office of a Collector for a period of ten years; or.

(c) Who is serving or has served as a District Magistrate."

7. Now as close look on sub-section (1) would show that it is not that the tribunal consists of three members of equal rank, of whom one may be President. If that were to be so this would have been as added string to the bow of the petitioner. Instead it specifically mention that it would consist of a President and two assessors. In the wake of what follows, I am inclined to take the view that the legislature designedly and purposely used the word "assessors" and this has considerable if not conclusive significance. To repeat these person are not members *stricto sensu* of the Tribunal but assessors to the President. Their real status is thus clearly specified in the afore-quoted sub-section (1) and (2) as also sub-section (3) of Section 60, though in the later provision for ease of reference the word "member" has been used interchangeably for the two assessors as well. This is my view would however, not militate against the basic fact that the word "assessors" is a term well known to legal art. They are meant essentially to aid and assist the Court or Tribunal. They are not in essence the Court or the Tribunal itself but subservient limbs thereof whose function is obviously secondary and advisory in nature. In Webster's Third New International Dictionary, the following meaning have been assigned to the word "assessor":-

"assistant, judge's assistant, (to sit beside, assist in the office of judge); one appointed or elected to assist a judge or magistrate: especially one with special knowledge of the subject to be decided." Then again in Bouvier's Law Dictionary an "assessor" has been defined "as a person skilled in law. selected to advise the Judge of the inferior Courts". In Black's Law Dictionary an " assessor" is stated to mean:-

"A person learned in some particular science or industry, who sits with the Judge on the trial of a cause requiring such special knowledge and gives his advice.

In England it is the practice in admiralty business to call in assessors, in cases involving questions of navigation or seamanship. They are called "nautical assessors" (q. v.), and are always Brethren of the Trinity House."

It would be plain from the above that the legislature has advisedly used the word "assessors" as against the President of the Tribunal to highlight their secondary status.

8. This sharp distinction between the President and the two assessors is further evident from the fact that the statute carefully provides for the minimum qualification of the President. It is expressly laid down that one so appointed shall be a person qualified for appointment as a Judge of the High Court of Punjab and Haryana. In the alternative clauses (b) and (c) to sub-section 60 prescribe the basic administrative experience of such person to be one who has either held the office of a collector for a period of 10 years or is serving or has served as a District Magistrate. It would thus be evident that the President can only be a person having a minimum judicial or administrative qualification. In sharp contrast there to the same statute does not make the least mention of any qualificatory clause so far as the assessors are concerned. Indeed sub-section (3) would indicate that the two assessors could be appointed without having any educational or judicial qualification what so ever. One of them would emanate from an authority no higher than the municipal committee of the Particular town for which the tribunal is to function since the statute has prescribed such a municipal committee or to be the appointing authority. The sharp contrast, therefore, between the President of the Tribunal on the one hand and the two assessors on the other is in a way manifest at the very threshold.

9. What next calls for notice is the fact that though the assessors are to assist the President the statute nowhere prescribes that either both the assessors or one or the other of them should always be present at the hearing of the Tribunal. If it were the intent of the statute that the president cannot function at all for specified purpose unless invariable assisted by two or at least one of the assessors, then normally (though not necessarily) the legislature in its wisdom would have provided for the minimum quorum of the Tribunal. Admittedly, this has not been done. Indeed, far from it being so, the statute, as would be evident hereafter, in fact visualises in terms the absence of not only one but even of both the assessors and expressly cloths the proceedings in their absence with total validity. A more exhaustive discussion on this aspect falls in the context of the provisions of Section 65 of the Act.

10. Again Section 59 of the Act seeks to equate the Tribunal thereunder to the function of the Court under the Land acquisition Act, 1894, on which its proceedings are to be basically modelled. It deserves highlighting that under the Land Acquisition Act, the acquisition Court is the Court of the principal original Land jurisdiction in the district. The land Acquisition Act, the provisions of which in substances are to apply with modification admittedly does not visualize any acquisition court necessarily functioning with the aid of assessors. At the very inception of the proceedings of the Tribunal in a particular case, section 59(c) of the Act would come into play and its provisions call for notice in extenso:-

"59. For the purpose of acquiring land under the Land Acquisition Act, 1894, for

the trust-

(a) & (b) xx xx xx

(c) the President of the tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908":

It is plain from the above that all the requisite procedural powers of the Court are in terms vested in the President of the Tribunal alone and not in the president with reference to the assessors. This again is a pointer to the fact that the assessors are in the nature of subsidiary assistants rather than being an integral part of the Tribunal itself. The result, therefore, is that the material powers of summoning and enforcing the attendance of witnesses, the compelling and production of documents with all of the CPC is rested with the President of the Tribunal and not the two assessors.

11. Reference in this context is also made to the provisions of section 62 and 63. Therefrom it is manifest that the administrative head of the staff and functions of the Tribunal is that President thereof to the total exclusion of the two assessors. The power to determine the staff, etc., for carrying on the business of the Tribunal the amount of salary payable thereto and the power of appointment, removal and dismissal have all been vested in the president. Similarly the remuneration etc., to be paid to the staff as also to the two assessors are enjoined to be paid by the Trust to the President who further distributes the same. This also highlights the further administrative prominence of the President whilst the two assessors do not at all figure in this regard and indeed the president is also the disbursing authority for them.

12. The next significant thing which deserves both perhaps repetition and reiteration is that there is no provision in the Act which even remotely can compel the attendance of both or any one of the assessors at the hearing of the Tribunal. Reference to Section 61 would show that one of the modes of payment to the assessors is by way of fees. Whether in a particular case an assessor would accept the fees, or may generally wish to attend is not prescribed in the provision. The president and for that matter any other authority has no power to summon or compel the attendance of either of the two assessors. The present case is significant in a way because it highlights the fact that despite full notice neither of the two assessors had chosen to associate himself with the proceedings at any stage though they were admittedly long drawn out for a period of 2-3 years. Patently, therefore, the law does not make it obligatory on the assessors to attend nor does it provide for any penalty for their non-appearance at the hearings. Therefore, it is difficult to visualise the assessors as an integral part of the Tribunal where they are neither under a legal obligation to attend nor any adverse consequences follow from their non-attendance. It is difficult to concede that the legislature wished to continue a situation where an

assessor or assessors, by their mere non participation, could render the whole proceedings for determining compensation non est.

13. However, it is the provisions of Section 65(1)(b) and sub-section (2) thereof which are the clearest pointers to the true position of the assessors to the true position of the assessors to the president of the Tribunal to appreciate this aspect, Section 65 may first be read:-

"65. (1) For the purpose of determining the award made by the tribunal under the Land Acquisition Act, 1894-

(a) if there is any disagreement as to the measurement of land, or to the amount of compensation or costs to be allowed, the opinion of the majority of the members of the tribunal shall prevail;

(b) notwithstanding anything contained in the foregoing clause, the decision on all question of law and title and procedure shall rest solely with the president of the tribunal, and such questions may be tried and decided by the president in the absence of assessors unless the president considers their presence necessary.

(2) Notwithstanding any other provisions of this act the president of the tribunal may record the evidence on any matter in the absence of assessors unless he considers their presence necessary

(3) Every award of the tribunal, and every order made by the tribunal for the payment of money, shall be enforced by a Court of small causes, or if there be no such Court, by the Senior sub-judge within the local limits of whose jurisdiction it was made as if it were a decree of that Court."

Adverting first to sub-section (2) aforesaid it calls for pointed notice that the President of the Tribunal is entitled to conduct the proceedings alone in the absence of the assessors unless he considers their presence necessary. In practical effect therefore, it would be within the discretion of the President to record the whole of the evidence in any compensation matter, however, material its import maybe in the absence of the assessors. This sub-section was inserted by the amending Act (Haryana Act, 35 of 1974). Now the intent of this amendment appears to be plain. If the whole of the evidence or a substantial part thereof can be recorded in the total absence of both the assessors it would clearly indicate that they are not an integral part of the Tribunal whose function is basically judicial. It is axiomatic that a judicial or a quasi judicial body which has to decide a matter upon evidence would normally (though not invariably) have it recorded in its presence. In Fact in the larger judicial perspective it has been repeatedly said that the trial Court having the benefit of observing the witnesses in the box is in an inevitably superior position by virtue of this particular fact. In any case, recording of evidence by a judicial Tribunal is a part of its function and where the law itself provides that the assessors can be wholly absent therefrom, then by implied intendment it would follow that they are equally not deemed to be the integral part of such a Tribunal.

14. Yet again, the aforesaid sub-section (2) does not stand in isolation. It has obviously to be read with the even more significant provision of the preceding clause (b) of sub-section (1) thereof. This in essence provides that on all material questions during the course of the trial, the decision of the president is final or indeed to put it more precisely, such a decision rests solely with him to the exclusion of both the assessors. This is expressly with regard to all question of law arising before the tribunal on all question of title which may call for determination and on all question of procedure, however material those may be. The use of word "solely" and the total exclusion of assessors from its meaningful field is this obvious. Even if the matter rested at that, there may have been some room for argument on behalf of the petitioners. But the aforesaid clause (b) further provides that all these vital questions may be tried and terminated by the president alone in the absence of both the assessors unless the President considers their presence necessary. Thus even the most material and vital question of law, title and procedure are not only but can be tried and pronounced upon in the total absence of the assessors which indicates that they are not integral part of the decision making process herein. It would appear that the legislature advisedly excluded the assessors from the vital and material aspect of the case and had made their presence wholly dependent on the discretion of the president.

15. As I said earlier it is not on the basis of a solitary provision or an isolated aspect that the issue herein has to be viewed. It is on the larger schematic perspective and with the background of the totality of the relevant provisions that one has to advert to and construe the provision of section 65(1)(a). It is laid down that in the event of a disagreement as to the measurement of land to the amount of compensation or costs, the majority opinion shall prevail. To my mind, the event of disagreement is material for the construction of this provision. Disagreement would naturally postulate the presence of the assessors and their rendering an opinion which may be contrary to another. If they are neither present nor opine on the issue, no question of any disagreement arises nor the necessity of the pre-eminence of majority opinion. Therefore, Section 65(1)(a) pre-supposes the presence and the opening process of the assessors. In case neither of the two things co-exist, clause (a) would hardly come into play, again, apart from this what if the assessors, as in the present case have never associated themselves at any stage of the proceedings? What if they have never heard the evidence at all, nor even remained present when the meaningful issues of law, title and procedure were decided nor have the benefit of hearing the case of either side when presented by way of arguments before the Tribunal? It is in the light of these possibilities that this provision has to be construed. The total impact that follows therefrom as also from the earlier provision noticed in this context, is that if clause (a) has any meaning and can possibly have a reasonable application, it is only on the assumption that at the time of rendering the award the assessors, are in fact present and have an opinion to offer which differs with that of the president or each other, resulting in a disagreement. If they are

neither present nor have any opinion of the material issues of measurement of land or the amount of compensation or costs, then these provisions cannot have any interplay. It appears to me that the only reasonable way of reading clauses (a) of sub-section 65(1) is that this would apply only in the situation where the assessors are actually present and choose to opine for the purpose of determining the award. Their actual presence and participation in the decision making process is therefore, implicit in the provisions. Significant in this context is the fact that even here the statute does not provide for the eventuality of only one of the assessors being present and choosing to differ with the president.

16. One must equally recall the well-known maxim of interpretation that a provision must be interpreted in a manner which makes the statute workable. If it were to be held that the award cannot be rendered unless and until both the assessors are present with the President and further record their opinion thereon, then the very rendering of the award may become hamstrung and moribund. As already noticed, the Act makes no provision of compelling and enforcing the attendance of the assessors even at the last and final stage of determining the award u/s 65(1)(a). One can therefore visualise a whole long drawn litigation for compensation materially affecting the citizens, lying static and incapable of decision because one or other of the assessors does not choose to attend or to opine in the rendering of the award. Such a construction may, in fact, make the very working of all the provisions for awarding compensation to the citizens wholly ineffective and in any case subject to the peculiar idiosyncrasy of individual assessors. It is, therefore, both reasonable and necessary to read the words "if present" into the provisions of Clause (a) of Section 65(1) of the Act.

17. To conclude, I would, therefore, hold that if neither of the assessors is present or opines on the issues of the measurement of land, of the amount of compensation or costs, then the award rendered by the President alone would suffer from no infirmity worth the name. The answer to the question posed at the our set has. therefore, to be rendered in the negative.

18. Now apart from the above, we are equally impressed by the firm stand of the learned advocate General, Haryana, to the effect that at no stage whatsoever over a long drawn out trial extending over 2-3 years did not petitioner raise his little finger against the alleged absence of the two assessors of the Tribunal. This was so throughout the stages of recording evidence and the determination of question of procedure, title and issues of law. Even if it may be said that these could lawfully be conducted in the absence of the two assessors, it had to be conceded on the part of the petitioner that at least at the stage of the final argument before the president on he issues of measurement of land, of the amount of compensation or costs, an objection could be forthwith and forcefully raised about the absence of the assessors. Admittedly, not a hint of any such objection was ever raised. It is, therefore, manifest that the petitioner herein had not merely sat on the fence during the proceedings but in fact had actively



invited a decision by the President of the Tribunal sitting alone. It, therefore, does not and should not lie in the mouth of the petitioner now to raise an objection of the present nature. Assuming entirely for the sake of argument (without even remotely holding so) that at the stage of rendering the award the presence and the participation of the assessors is necessary, the petitioner by his conduct must be deemed to have expressly waived off any such infirmity therein. There is a long line of precedents on the aspect of it suffices to quote the following observations of their Lordships in Pannalal Binjraj Vs. Union of India (UOI), :-

"There is moreover another feature which is common to both these groups and it is that none of the petitioners raised any objection to their cases being transferred in the manner stated above and in fact submitted to the jurisdiction of the Income Tax Officers to whom their cases have been transferred. It was only after our decision in Bidi Supply Co. Vs. The Union of India (UOI) and Others, was pronounced on 20th March 1956, that these petitioners woke up and asserted their alleged rights, the Amritsar group on 20th April, 1956, and the Raichur group on 5th November 1956. If they acquiesced in the jurisdiction of the Income Tax Officers to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief from the hands of this Court."

To the same effect and in some cases even more conclusively are the observations in Manak Lal Vs. Dr. Prem Chand, ; The Punjab University, Chandigarh Vs. Vijay Singh Lamba and Others, ; Jagatjit Cotton Textile Mills Ltd., Phagware Vs. Industrial Tribunal, Patiala and Others, , Davinder Singh v. Deputy Secretary cum-Settlement Commissioner, Rural, Rehabilitation Department, Punjab ILR (1964) 1 Punj 905: (AIR 1964 P & H 291)(FB); Attar Singh v. State of Haryana 1973 P & H 90; Ram Nath Vs. Ramesh and Others, , O. A. O. K. Lakshmanan Chettiar v. Commissioner, Corporation of Madras AIR 1927 Mad 130(FB) and K. Nagamuniah Chetty v. State Transport Authority, Andhra Pradesh, Hyderabad 1961(1) Cri LJ 619(Andh Pra).

19. In view of the above, we must also uphold the objection of the respondent-State that in all these cases the petitioners cannot now be allowed for the first time to raise the objection of the absence of the assessors for the purposes of Section 65(1)(a) because they have actively participated in the proceedings and had invited a decision by the President of the Tribunal which in material parts run in their favour as well.

With the rendering of aforesaid decision on the two material legal issues, which had necessitated their consideration by the Division Bench, we would accede to the common prayer of the learned counsel for the parties that these cases be now sent to a learned single Judge for a decision on the merits of each case. It is ordered accordingly. There will be no order as to costs.

Case remanded for decision on merit.