(2014) 07 P&H CK 0840

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 15967 of 2012

Surender Kumari — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 11, 31, 4
Punjab Municipal Corporation Act, 1976 — Section 170, 171
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(1), 24(2)

Citation : (2014) 07 P&H CK 0840

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Advocate : Kanwaljit Singh, Sr. Advocate and Pankaj Midha, Advocate for the Appellant; V. Ramswaroop, Addl. A.G. and Samrath Sagar, Advocate for the Respondent

Final Decision : Allowed

Judgement

Paramjit Singh Patwalia, J.—Instant civil writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 01.08.2011 (Annexure P-15) passed by respondent No. 1 and order dated 15.05.2012 (Annexure P-20) passed by respondent authorities whereby the respondent authorities have unilaterally decided to disburse the compensation amount to the tune of Rs. 6,64,500/- vide cheque No. 083725 dated 15.05.2012 without affording any opportunity of hearing to the petitioners and without associating them in any proceeding while determining the compensation amount and in the alternative for directing respondent authorities to allot a plot equivalent to the area comprised in khasra No. 22/4 min and 22/5/1 at Dhandari Khurd in lieu of plot measuring 580 sq. yards comprised in khasra No. 61/22, Dhandari Kalan, which has come under the construction of Dhandari railway flyover, G.T. Road, Ludhiana, as per their decision/recommendation/resolution

No. 4962 dated 18.07.2005 and approved vide resolution No. 5614 dated 26.09.2005 and approved by finance committee on 23.02.2006 and further approved by the Commissioner on 17.02.2009. Further prayer is made for issuance of a writ in the nature of mandamus directing the respondent authorities to disburse the compensation amount @ Rs. 38,000/- per sq. yard along with interest @ 18% per annum till realization as determined by the respondent authorities vide letter No. 8770/DRA/LAC dated 31.10.2011 or in the alternative for a direction to respondent authorities to disburse compensation amount equivalent to the prevailing market value along with interest @ 18 % per annum till realization or to allot/give a plot of equivalent area measuring 580 sq. yards having equal market value in the same vicinity in lieu of the plot as per their resolutions. Further prayer is made for directing the respondent authorities to disburse mesne profits/damages/compensation amount @ Rs. 10,000/- per month from January 2006 onwards till the date of allotment and possession of the plot to the petitioners.

2. Brief facts of the case are that father of the petitioners Hari Chand Sood was owner of the plot measuring 580 sq. yards, which he had purchased vide sale deed No. 8977 dated 27.10.1983 comprising of khasra No. 61/22, Dhandari Kalan, G.T. Road, Ludhiana. Late Hari Chand had constructed three pucca rooms over the plot, which was ''A'' Class construction and his family members were running a firm from the said premises. Electricity connection was existing in the said premises. Son-in-law of late Hari Chand, namely, Ashok Sood had taken sale tax number pertaining to trade of cycle spare parts. In the year 2001 construction of Dhandari railway flyover started at G.T. Road, Ludhiana and beneath the flyover, land comprising of abovesaid khasra number came and was utilized by the authorities without any acquisition proceedings on the basis of alleged assurance that Hari Chand would be given a plot of equal size and equal price on the G.T. road. Ultimately, flyover was constructed over the land of Hari Chand, due to which this land/plot became unviable for late Hari Chand for any purpose and the rooms were also demolished. Late Hari Chand had not been paid any compensation nor was given land of equivalent area in lieu of his land used for flyover. The construction of the flyover continued approximately for six years. It is further averred that during the process of construction of flyover Hari Chand gave a representation to the authorities and asked for allotment of land in lieu of the land which came under the flyover. Vide letter dated 10.07.2001 of the Project Engineer, Ludhiana, Municipal Corporation, Town Planner was requested for compensating the father of the petitioners with adjoining land of the Municipal Corporation. The Assistant Town Planner, HQ vide letter dated 07.01.2005 recommended the case of Late Hari Chand, which was affirmed by STV on 28.01.2005 and further submitted to finance and contract committee for approval. The matter was enquired about the ownership as well as possession and same was found to be correct by Tehsildar on 24.02.2004. Joint Commissioner had also recommended on 29.03.2005 that to avoid unnecessary litigation, it would be just and equitable if person whose land has come under the

flyover area be given in exchange the land from the land of Municipal Corporation. The Commissioner gave the administrative approval to the same on 04.04.2005. Further Mayor also gave permission to put up the case before the committee. The matter was taken up at item No. 41 and item No. 65 on 18.07.2005 and 26.09.2005, respectively (Annexures P-4 to P-6). The finance committee vide resolution No. 5614 dated 26.09.2005 had taken a decision with regard to allotting some other land near to the land of late Hari Chand. The finance committee further constituted sub committee consisting of three members i.e. Zonal Commissioner, STV and SEA, which took 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 GT Road. A little ahead of this land on the GT 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.

3. The above proposal was sent to the Commissioner and Commissioner vide his order dated 01.03.2006 asked to submit the agenda note so that the case could be put up before the House. The office, after preparing the note, forwarded the case to the Commissioner through JC(K). JC(K) in his note dated 11.09.2006 asked to prepare the site plan of the land to be allotted and to inquire the collector rates of both the lands. The Commissioner vide his order dated 11.09.2006 asked JC(B) for examining the legal issues. JC(B) vide his note dated 15.09.2006 advised that such lands can be taken through negotiations/ consultations and compulsory acquisition is not mandatory. Such lands have earlier also been taken for construction of flyover. The only thing to be seen is that the value of the land to be given by Municipal Corporation should not exceed the value of the land taken, meaning thereby that the rate of both the lands should be same. Deputy Commissioner was asked to give the value of both the abovesaid lands. It was informed by the Deputy Commissioner that rate of different areas in Ludhiana City has been revised in the year 2008. As per revised rate, rates of lands falling in Dhandari Kalan and Dhandari Khurd situated on G.T. Road are same. The distance between both these lands is merely 500-600 feet. The House vide its resolution No. 980 dated 27.11.2009 approved that instead of giving land in exchange to late Hari Chand he be given compensation for the land which came under the flyover as per law. The authorities vide memo No. 6/74/09-L.G./1/953 dated 24.02.2010 (Annexure P-8) sent the resolution for necessary approval of the Government. The Municipal Corporation vide letters dated 02.10.2006, 07.12.2006, 28.05.2007 and 05.10.2007 sought information from Deputy Collector, Ludhiana about the

market rate of the land in dispute. Since the authorities failed to address the grievance of late Hari Chand for not allotting the equivalent land in lieu of the land which had come under the flyover, as per their assurance, late Hari Chand filed CWP No. 9846 of 2011, which was disposed of vide order dated 30.05.2011 directing the respondent authorities to consider the representation and take appropriate action in accordance with law within two months. Despite time-bound direction, no compensation was disbursed. Further representation was made mentioning the prevailing rates and it was submitted that compensation of Rs. 2,28,40,000/- comes out for said plot. Even COCP was filed. Failing to get any relief except cheque of meagre compensation sent by Municipal Corporation without associating the petitioners or their father, petitioners have approached this Court.

4. Upon notice, respondents appeared and filed reply. Respondents No. 2 to 4 filed reply through Raj Kumar, Municipal Town Planner, Municipal Corporation, Ludhiana. It was admitted that contents of para No. 3 of the writ petition are correct to the extent that in the record area measuring 580 sq. yards was in the name of deceased Hari Chand and the site falls on the Dhandari Kalan G.T. Road, Ludhiana. Rest of the facts were denied for want of knowledge. It is submitted that compensation has been assessed as per decision of the Principal Secretary, Local Government Department, Punjab and the amount has been paid. The compensation has been calculated as per market value of that period in which the land was acquired as per decision of PSLG but the petitioner voluntarily refused to accept the amount. The Government has never taken a decision to pay compensation at the rate of Rs. 38000/- per sq. yard and prayer for dismissal of the writ petition has been made.

5. On behalf of respondent No. 1 short reply was filed reserving the right to file a detailed reply if required so at some later stage. It is mentioned in the reply that the House in its resolution dated 27.11.2009 (Annexure P-7) had decided to grant monetary compensation to the petitioner and other land owners whose land had been acquired. It is submitted that order dated 01.08.2011 (Annexure P-15) had been passed after considering the representation of the petitioner coupled with resolutions of the Corporation and also taking into consideration Sections 170 and 171 of the Punjab Municipal Corporation Act, 1976 (for short ''1976 Act'') qua acquisition.

6. I have heard learned counsel for the parties and perused the record.

7. Learned senior counsel for the petitioners vehemently contended that land was never acquired. It was taken with understanding and that too without any written agreement that equivalent land shall be given to the predecessor-in-interest of the petitioners out of the land of the Municipal Corporation instead of paying compensation. Learned senior counsel further contended that original owner has died and he was not paid any penny. The prices of the land have increased manifolds. The present litigation is being contested by legal heirs of deceased Hari Chand. Their predecessor-in-interest was not even in a position to

purchase the land. It was also contended that since the land was not acquired in accordance with law, the compensation has been determined unilaterally without following established procedure which is applicable as per provisions of the Land Acquisition Act 1894 (for short ''1894 Act''). It was further contended by learned senior counsel that now new acquisition Act known as The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'' (for short ''2013 Act'') has come into being. As per 2013 Act compensation is required to be assessed by the Corporation and mesne profits are also required to be paid for utilizing the land which was taken without following the procedure or without any written agreement. Learned senior counsel contended that since the compensation has not been paid petitioners are entitled to compensation as per the provisions of 2013 Act or in the alternative entitled to land equivalent to the land used for the flyover.

8. On the other hand, learned counsel for the respondents vehemently contended that land was taken under an oral agreement in view of Section 170 of the 1976 Act. It is submitted that once the possession has been taken then the compensation can only be paid from the date of possession and at the same very rate. Provisions of 2013 Act are not applicable. It is further contended that although resolutions have been passed but the same were not approved by the Government as were required to be approved under the provisions of the 1976 Act. As per directions of the competent authority, compensation cheques were sent to Hari Chand but the same were not accepted. As such there is no dispute regarding the fact that major part of the land has been utilized in the construction of railway flyover Dhandari Kalan G.T. Road, Ludhiana.

9. I have considered the contentions raised by learned counsel for the parties.

10. Before I deal with the contentions, it would be appropriate to reproduce Sections 170 and 171 of the 1976 Act, which read as under:-

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, u/s 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.

11. Section 170 of the 1976 Act provides that whenever Corporation decides to acquire immovable property for the purpose of this Act, Commissioner shall acquire such land on behalf of Corporation by agreement on such terms and at

such price as may be approved by the Corporation. Perusal of Section 171 of the 1976 Act reveals that when the land cannot be acquired by agreement then the procedure under the provisions of 1894 Act is to be followed. However, since 1894 Act stands repealed the procedure under the provisions of 2013 Act is to be followed.

12. 2013 Act puts in place entirely new regime for compulsory acquisition of land and provides for new scheme for compensation, rehabilitation and resettlement to the affected families whose land has been acquired or proposed to be acquired or affected by such acquisition.

13. Section 24 of 2013 Act reads as under:-

24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,-

a) Where no award u/s 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition u/s 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

14. In the light of above provisions, question arises "whether land has been acquired by the Municipal Corporation for the public purpose of construction of railway flyover by way of agreement u/s 170 of the 1976 Act".

15. Admittedly, no document has been placed on record by the Municipal Corporation which may indicate that it has taken possession of the land by way of any agreement. Even in the reply it has been mentioned that there was an oral agreement. Most of the averments have been denied for want of knowledge. Only ownership of Hari Chand has been admitted. Since Commissioner could not enter into agreement with the owner of the land as per provisions of Section

170, only option for the Corporation was to proceed u/s 171. Section 171 postulates that procedure of 1894 Act is to be followed, which has also not been followed. In view of this, it cannot be said that land has been acquired either under the provisions of Section 170 or by following the procedure as laid down u/s 171 of the 1976 Act. Thus, I hold that land has not been acquired but the fact remains that possession was taken by the Municipal Corporation and the flyover has been constructed which fact has not been denied by learned counsel for the respondents. This fact is further proved from the fact that Corporation unilaterally sent compensation amount vide impugned letter along with cheque, meaning thereby Corporation is accepting the ownership of the property in question whose earlier owner was Hari Chand (since deceased) and now petitioners being his LRs are pursuing the matter.

16. Another crucial question which arises is "whether the compensation can be said to have been paid to the petitioners by merely sending a cheque which has not been accepted and before determining compensation whether any objections were invited from the petitioners and what procedure was followed in this regard and how compensation is to be determined when possession is taken without acquisition?"

17. So far as the first part of the question is concerned, admittedly the land has not been acquired but has been utilized atleast between the years 2001-2007. It is also admitted that there is lot of correspondence between deceased Hari Chand and the Corporation and thereafter between the petitioners and the Corporation. It is also not in dispute that many resolutions have been passed and in some of the resolutions of the Corporation to which administrative approval was granted by the Commissioner being a competent authority, it was suggested that equivalent land be given after getting assessed the value of both the lands. At one stage compensation was also sought to be determined at the rate of Rs. 38000/- per sq. yard. Section 31 of the 1894 Act envisages the payment of compensation to the land owner or deposit the same in Court. It would be appropriate to determine whether compensation has been paid to the deceased or petitioners being LRs of Hari Chand after coming into force of the 2013 Act. Since the Municipal Corporation has not followed the procedure u/s 170 or 171 of the 1976 Act, payment of compensation by unilaterally sending cheque, cannot be treated as compensation.

18. In the light of provisions of Section 31 of the 1894 Act it would be appropriate to find out the meaning of expression "compensation has not been paid" as it is occurring in 2013 Act. Section 24(2) of the 2013 Act provides that if compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of land acquisition afresh in accordance with the provisions of 2013 Act. In the present case no acquisition proceedings were initiated either under the 1894 Act or under Sections 170 or 171 of the 1976 Act, then compensation cannot be said to have been paid or determined in accordance with law. Section

24(2) of the 2013 Act contains non obstante clause. This provision has overriding effect over Section 24(1) of the 2013 Act. Section 24(2) stipulates that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz.; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have elapsed.

19. If the present case is considered under the provisions of any of the Acts i.e. 1976 Act, 1894 Act and 2013 Act, it can very well be said that land has neither been acquired under the provisions of Sections 170 and 171 of the 1976 Act nor the procedure which is to be followed in view of Section 171 i.e. as per provisions of 1894 Act, has been followed, meaning thereby that land has never been acquired. Since the land of Hari Chand (now represented by petitioners) has been utilized for railway flyover then the only procedure to be followed is as per Section 24 of the 2013 Act. Hon''ble Supreme Court in Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, has categorically held that provisions of new Act have overriding effect over the earlier provisions if two conditions were fulfilled i.e. physical possession of the land has not been taken or the compensation has not been paid. 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 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 Misirimal Solanki (supra) as well as in Union of India (UOI) and Others Vs. Shiv Raj and Others,

20. It is also made clear that if the Municipal Corporation wants to give land equivalent to the land which was used for railway flyover then it can be done within a period of two months from the date of receipt of certified copy of this order.

21. It is crystal clear from the facts and circumstances of the case that the Corporation appears to have been ill-advised to resist the right of the petitioners specifically with regard to payment of compensation as per the market rate or in accordance with law. Petitioners'' land has been utilized during the period starting from 2001. Already 14 years have elapsed. Prices have increased many times. At that time predecessor-in-interest of the petitioners was not in a position to purchase the property for want of payment of compensation. Government and Corporation authorities were enjoying the fruits without payment of compensation and the original owner had even died and his LRs are approaching this Court.

22. Resultantly, present writ petition is allowed with costs of Rs. 50,000/-, which

shall be recovered from the officials at fault, including the Government officials who had passed the orders to pay compensation without associating the petitioners or without following the procedure for determination of compensation.

