

(2003) 08 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 10979 of 1998

Suresh Chand and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 29-08-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 6

Citation : (2004) 136 PLR 40

Hon'ble Judges : S.S. Saron, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : C.B. Goel, for the Appellant; Vijay Dahiya, AAG, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This is a petition for quashing award Annexure P5 dated 18/11/1995 passed by Land Acquisition Collector, Urban Estates, Faridabad (respondent No. 2).

2. The petitioners are owners in possession of land measuring 62 kanals 18 marlas comprised in Khasra Nos. 121/114/2, 17, 1821, 19/3, 21/2, 22/2, 23, 24/1, 24/2, 131/1, 2, 3/1, 10/1 situated in Village Sihi, Tehsil Ballabgarh, District Faridabad. They claim to have constructed a factory building, residential quarters, godowns etc. with a boundary wall on three sides on the land in dispute. To substantiate this assertion, they have placed on record copies of judgments dated 6.9.1985 (Annexure P1) passed by Sub Judge, Ist Class, Faridabad and dated 28.5.1988 (Annexure P2) passed by Additional Senior Sub Judge, Faridabad in the suits for permanent injunction filed by them against Faridabad Complex Administration for restraining the latter from demolishing their construction.

3. The above described land of the petitioners was sought to be acquired by the State Government vide notification dated 20.5.1974 issued u/s 4 of the Land Acquisition Act, 1894 (for short, the Act), but after issuance of the initial

notification, no further step was taken in that direction. In the next 8 years, two more notifications including the one dated 8.6.1982 were issued for acquisition of their land, but the matter was riot pursued. After a gap of one decade, the State Government issued notification dated 23.11.1992 u/s 4 which was followed by notification dated 19.11.1993 issued u/s 6 of the Act for acquisition of the land in question as a part of 163.83 acres of land acquired for development and utilisation thereof for residential and commercial purposes (Sector 2 Faridabad). The petitioners filed objections u/s 5-A of the Act and then instituted C.W.P. No. 4557 of 1994 for quashing of the two notifications by asserting that the same had not been published as per the provisions of Section 4(1) of the Act. The writ petition was dismissed by a Division Bench of this Court. The review application filed by the petitioners was also dismissed by this Court.

4. In the meanwhile, respondent No. 2 is said to have announced award dated 18.11.1995 (Annexure P5) for payment of compensation to the claimants including the petitioners. They have challenged the award on the ground that the same has not been passed in accordance with the provisions of Section 11 read with Section 11-A of the Act. They have averred that even though, award Annexure P5 is shown to have been announced on 18.11.1995, as a matter of fact, the same was announced after expiry of two years counted from the date of publication of notification u/s 6 and the record has been ante-dated to show that the provisions of the Act have not been violated. They have further averred that before pronouncing the award, respondent No. 2 did not obtain previous approval of the appropriate government as required by Section 11 of the Act. Another ground on which the petitioners have challenged the impugned award is that no compensation has been determined for the building and structures standing on the land.

5. In their written statement, the respondents have questioned the very maintainability of the writ petition on the ground that C.W.P. Nos. 4557 of 1994 filed for quashing notification dated 23.11.1992 had been dismissed by this Court vide its order dated 24.5.1996 and that order has become final. On the issue of announcement of the award within the time limit prescribed u/s 11 read with Section 11-A of the Act, the respondents have not given any reply except making a general statement that all the statutory provisions were complied with while acquiring the land of the petitioners.

6. The petitioners have filed replication to the written statement of the respondents reiterating their assertion that the provisions of Sections 11 and 11-A of the Act had not been complied with.

7. During the pendency of the writ petition, the respondents filed additional affidavit dated 7.8.203 of Shri Manjit Singh Mann, Land Acquisition Collector, Urban Estates, Faridabad in which the respondent, while reiterating the assertions contained in the written statement, made the following statement in paragraph 5:-

"That it is further submitted that prior to award letter vide office memo No. 3383-85 dated 17.7.1995 was sent by deponent to Chief Controller of Finance, HUDA for grant of, amount of Rs.24 crore to be paid as the required sanction to announce award. It is attached as annexure R1. On dated 1.1.96 letter vide memo No. 95/1 was sent by Director, Urban Estates to Commissioner & Secretary to Government, Haryana for grant of Rs.24 crore. It is attached as annexure R-2. Further letter vide memo No. 10/46/90 dated 19.1.1996 was sent by Commissioner & Secretary to Government Haryana to Director, Urban Estates, Haryana approving grant of Rs.24 crore as compensation to be provided for acquisition of 398,88 acre land. Sector 2, Faridabad. The same is attached as annexure R3. Copy of this letter was also forwarded to the answering respondent, further letter dated 17.11.95 (annexure R4) from Accounts Officer, Chief Administrator, HUDA to Chief Manager, Bank of Baroda, Sector 11, Panchkula advising him to place at the disposal of LAC Faridabad a sum of Rs.24 crore for making award of Sector-2, Faridabad. The cheque books from which cheques for disbursement to land owners were issued on 17.11.1995 by the Manager Bank of Baroda, Sector 1, Panchkula."

8. Alongwith his affidavit, Shri Manjit Singh Maan has placed on record documents marked as Annexures R1 to R4.

9. We have heard learned counsel for the parties and perused the record, Shri C.B. Goel did not press the petitioner's challenge to the impugned notifications apparently because C.W.P. No. 4557 of 1994 filed for quashing those notifications was dismissed by a Division Bench. He, however, argued that the impugned award should be quashed because it has been passed without complying with the mandate of Section 11 read with Section 11-A of the Act. Learned counsel submitted that prior approval of the appropriate government is a conditions precedent to the passing of an award and as no such approval was obtained by respondent No. 2, the award passed by him is liable to be declared as nullity. He further argued that the award was actually pronounced after 19.11.1995, but it was ante-dated to show as if the same had been pronounced within the time prescribed u/s 11-A of the Act. Shri Goel then referred to Annexure R1 to R3 filed with the affidavit of Shri Manjit Singh Maan and argued that sanction given by the Financial commissioner and Secretary to Government of Haryana, Town and Country Planning Department which was conveyed vide letter dated 19.1.1996 for payment of compensation of Rs.24 crores cannot be construed as a prior approval of the government within the contemplation of first proviso to Section 11(1) of the Act.

10. Shri Vijay Dahiya learned Assistant Advocate General, Haryana referred to Annexures R1 to R4 filed with the affidavit of Shri Manjit Singh Maan and argued that prior approval of the government should be read as implicit in the sanction given for disbursement of Rs.24 crores as compensation for acquisition of the land for Sector 2, Faridabad.

11. We have thoughtfully considered the arguments/submissions of the learned

counsel.

12. Section 11 and 11-A of the Act, which have bearing on the decision of the writ petition, read as under:-

"11. Enquiry and award by Collector. - (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the publication of the notification u/s 4, Sub-section (1) and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf: Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in Sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under Sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of the Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under Sub-section (2) shall be liable to registration under that Act.

11 -A. Period within which an award shall be made.- The Collector shall make an award u/s 11 within a period of two years from the date" of the publication of the declaration and if no award is made within that period; the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the

commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation:- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

13. A reading of the above reproduced provisions shows that after making appropriate enquiry, the Collector is required to make an award. First proviso to Section 11(1) envisages that no award shall be made by the Collector without the previous approval of the appropriate government or of such officer, as the appropriate government may authorise in this behalf. The use of the word "shall" and the expression "previous approval of the appropriate government" appearing in this proviso make it clear that no award can be passed by the Land Acquisition Collector without obtaining prior approval of the appropriate government except when the concerned government directs the Collector to make such award without prior approval. Section 11-A provides the limitation within which the award has to be made by the Collector except in the case of stay granted by the competent Court. It is, thus, clear that if no award is made within the statutory period of limitation after obtaining prior approval of the appropriate government or the authorised officer, the entire proceedings for acquisition of the land would lapse.

14. What has appeared in the present case is that after respondent No. 2 had made enquiry as envisaged by Section 11, he sent letter dated 17.8.1995 (Annexure R4) to the Chief Financial Controller, Haryana Urban Development Authority, Panchkula to remit a sum of Rs.24 Crores so that he could pass award and hand over possession to the Haryana Urban Development Authority. He also urged the officer concerned to obtain approval of the government. Thereafter, Director, Urban Estates, Haryana, Panchkula Commissioner and Secretary to Government of Haryana, Town and Country Planning Department with the request that administrative sanction for payment of Rs.24 crores may be conveyed. The Financial Commissioner concerned gave sanction for payment of Rs.24 Crores as compensation. This was conveyed to Director, Urban Development Department, Haryana vide letter dated 19.1.1996 (Annexure R3). Annexure R4 dated 17.11.1995 is a copy of letter written by Chief Administrator, Haryana Urban Development Authority to the General Manager, Bank of Baroda for making available a sum of Rs.24 Crores to Land Acquisition Collector, Faridabad for award of Section 2, Faridabad.

15. A careful reading of the documents referred to hereinabove shows that even though, respondent No. 2 had sought approval of the government before pronouncing the award, the required approval was not conveyed by the competent authority and the award was pronounced without such approval. Thus, the violation of first proviso to Section 11 of the Act is writ large on the face of the record of this case. The argument of the learned Assistant Advocate General that approval of the Government should be considered implicit in the

sanction issued for disbursement of Rs.24 Crores as compensation and the impugned award should not be quashed on the ground of violation of Section 11 read with Section 11-A of the Act sounds attractive, but lacks merit. The first proviso to Section 11(1) contemplates prior approval of the appropriate government. This necessarily means that the government concerned must apply its mind on the issue of passing the award and convey its nod to the Land Acquisition Collector before the award is announced. There is nothing in the language of Section 11 of the Act from which it can be inferred that the government can give approval after the pronouncement of the award. Moreover, if we were to read the approval of the government as implicit in letter dated 19.1.1996, then the award will have to be treated as nullity because then it will be deemed to have pronounced after 2 years from the date of publication of notification u/s 6 of the Act. That would be in clear violation of Section 11-A of the Act.

16. The consequence of violation of the scheme of Sections 11 and 11-A of the Act has been indicated by the Supreme Court in *State of U.P. and Ors. v. Rajiv Gupta and Anr.* 1995 L.A.C.C. (S.C.) 21. In that case, their Lordships held that if no award is made within the statutory period of two years by the Land Acquisition Officer after obtaining approval of the government, the proceedings of acquisition would lapse.

17. By applying the ratio of the above noted decision to the facts of this case, we hold that award Annexure P5 is ultra vires to Section 11 read with Section 11-A of the Act.

18. Hence, the writ petition is allowed and the impugned award is quashed. Consequently, the acquisition proceedings will be deemed to have lapsed qua the land of the petitioners.

Sd/-

S.S. Saron, J.

19. R.M.S.