
(2001) 01 P&H CK 0207

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 10425 of 1993

Surinder Nath

APPELLANT

Vs

Union Territory, Chandigarh and others

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11, 11(1), 4, 4(1)

Citation : (2001) 4 CivCC 180 : (2001) 3 RCR(Civil) 540

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Mr. P.C. Dhiman, for the Appellant; Mr. Ashok Aggarwal Mr. J.S. Sidhu and Mr. Subhash Goyal, for the Respondent

Judgement

V.K. Jhanji, J.—For facility of reference, facts are taken from Civil Writ Petition No. 10425 of 1993.

2. A notification u/s 4(1) of the Land Acquisition Act. 1894 (hereinafter referred to as the Act) was published in the Chandigarh Administration Gazette (Extraordinary) on 28.6.1990 proposing to acquire 64.23 acres of land situated in Manimajra, Union Territory. Chandigarh (Pocket No. 9) for Residential-aim-Commercial Scheme No. 3,. Declaration u/s 6 of the Act was issued on 24.6.1991 acquiring land measuring 56.53 acres. Award No, 479/LAO dated 21.6.1993 awarding compensation to the tune of Rs. 2,01,440/- per acre was announced. Challenge in the petition is to Notification u/s 4, Declaration under .Section 6 and Award dated 21.6.1993. Challenge is firstly on the ground that the Award was not made within a period of two years as provided u/s 11-A of the Act and so, the entire proceedings for acquisition have elapsed. Secondly, it is on the ground that no previous approval was obtained from The appropriate Government by the Land Acquisition Collector for giving Award as required under proviso to sub-section (1) of Section 11 of the Act and thus. Award by him is bad in law. Thirdly, challenge is on the ground that clear 15 days" notice as required u/s 9 of the Act was not given to the petitioners. Against this, the case of the respondents in

their written statement originally filed and in additional affidavit filed on 12.7.2000, is that Award was announced on 21.6.1993 and made within a period of two years from the date of publication of declaration u/s 6 of the Act. Respondents have stated that the amount as awarded under Award dated 21.6.1993 was released and most of the land-owners have taken compensation as awarded under the Act. In regard to the formal approval of the appropriate Government u/s 11 of the Act, respondents have stated that it is not available on the record. Regarding notice u/s 9 of the Act, the case of the respondents is that notice was despatched on 1.2.1993 to all the land-owners which was duly received by them. According to them, notice was of more than 15 days and the allegation of the petitioners that clear 15 days" notice was not given, is not correct.

3. Learned counsel appearing on behalf of petitioners has contended that the Award may have been announced on 21.6.1993 but was not signed till 24.8.1993. It is contended that the petitioners made an application on 24.8.1993 to the Copying Agency for supply of certified copy of award. The Copying Agency, in order to prepare the copy, called for the file from the Office of the Land Acquisition Collector. The file was not sent as the Assistant in the office of the Land Acquisition Collector gave a note on 24.8.1993 itself that the Award has not been signed as yet. According to the counsel, note dated 24.8.1993 of the Assistant in the office of Land Acquisition Collector, clearly proves that the Award had not been signed till 24.8.1993 and on that date, two years" period having expired from the date of declaration u/s 6 of the Act, proceedings from acquisition stood elapsed.

4. Section 11-A of the Act prescribes two years" period for making an Award from the date of publication of declaration u/s 6 of the Act. In *Kaliyappan v. State of Kerala and others* 1989 L.A.C.C. 11, the Supreme Court has held that "to make Award" Means "to sign the Award" and the "date of the Award" is the "date of signing of the Award".

5. In order to test the allegation of the counsel for the petitioners that the Award had not been signed till 24.8.1993, records of the acquisition proceedings were called for and on perusal of the same, I find that the Executive Officer, Notified Area Committee, Manimajra, Union Territory, Chandigarh, addressed Memo No. NAC/93/18487 dated 10.6.1993 to the Land Acquisition Officer, Union Territory, Chandigarh, requesting him to announce Award before 21.6.1993 as limitation to announce the same was to expire on the said date. Land Acquisition Officer U.T., Chandigarh, vide Memo No. 10965/LAO/CA dated 28.6.1993 informed the Executive Officer, Notified Area Committee, Manimajra, U.T. Chandigarh, that Award No. 479 of Pocket No. 9 has been announced on 21.6.1993. Executive Officer was requested to depute the concerned Patwari so that complete record in connection with the Award could be handed over to him. Perusal of the copy of the Award shows that it was announced on 21.6.1993. There is no indication that, the Award was not signed on 21.6.1993. On the last page of the office copy

of the Award, there is note dated 28.8.1993 of the Office Clerk to the effect "please despatch the Award signed by LAO". On the basis of this note, vide despatch No. 20819/21 dated 30.8.1993, a copy of the award was despatched to the Finance Secretary, Collector, Accountant, Executive Officer, N.A.C. This being so, the contention of counsel for the petitioners that the Award was signed later to 21.6.1993 is not borne out from the record and, therefore, no reliance can be placed on note dated 24.8.1993 given by some Assistant/Clerk of the Copying Agency that the Award has not been signed as yet.

6. Record produced before me has further shown that some of the land-owners whose land was also acquired along with the land of the petitioners, had filed Civil Writ Petition No. 15118 of the 1991 challenging the acquisition proceedings. In the said writ petition, at the motion hearing on 1.10.1991, dispossession of petitioners therein was stayed. That writ petition was dismissed on 22.9.1995. Explanation to Section 11A of the Act provides exclusion of the period of stay granted by a Court of any action or proceedings in pursuance of declaration u/s 6, from the period of two years. In *Government of Tamil Nadu and another v. Vasantha Bai* 1996 (Suppl.) A I L A C 46, the Supreme Court while considering the question whether the stay of dispossession would be a stay of proceedings under the Act so as to disable the Land Acquisition Officer to make the award, held that the stay of dispossession would tantamount to stay of further proceedings being taken u/s 11 and Explanation to Section 11-A, covers such an order and the entire period of stay has to be excluded in computing the period of two years prescribed by Section 11-A. In *L.N. Venkatesan Vs. State of Tamil Nadu and others*, and *Municipal Corporation of Delhi Vs. Lichho Devi and others*, , the Supreme Court reiterated that the entire period during which order staying dispossession of the landowners was in operation, it to be excluded while computing the period of two years prescribed by Section 11-A.

7. In the present case, it is not borne out from the record that the Award was not signed on 21.6.1993 when it was announced, but even if the allegation of petitioners that Award was signed on 30.8.1993 is accepted, then also the Award cannot be said to be made beyond the period of 2 years because the entire period during which stay order was in operation has to be excluded while computing the period of two years prescribed for making award u/s 11-A of the Act.

8. Faced with this situation, learned counsel for petitioners contended that the writ petition in which stay was obtained was not filed by the petitioners but by some other land-owners. This very contention was considered and rejected by a Division Bench of this Court in *Devinder Kumar and Others Vs. Union Territory and Others*, . It was held therein that it is wholly immaterial whether or not a particular individual has obtained stay qua acquisition of his land. The Division Bench was of the considered view that the undefined idea of excluding the period for which stay remained in vogue in computing the acquisition proceedings is through by virtue of stay granted by the Court, the concerned authorities could

not possibly proceed to finally acquire the land and put it to the public purpose for which it was sought to be acquired. The moment the Court grants stay, if becomes impracticable, if not impossible, to execute the Scheme for which the land stands notified for acquisition.

9. The next question to be considered is as to what is the effect of not obtaining the previous approval of the Government by the Land Acquisition Collector before making an Award.

10. As noticed earlier, an Award is made when the Collector draws up and signs the Award. Before an Award is made, Section 11 of the Act requires the Collector to make enquiry into the following :-

(i) the objection made by the interested person pursuant to notice u/s 9 of the Act:

(ii) the measurement of land made u/s 8 of the Act;

(iii) the value of land as on the date of notification u/s 4 of the Act: and

(iv) the respective interest of the person claiming compensation.

11. After the enquiry, the Collector has to make an Award in respect of-

(i) the true area of the land;

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

(iii) The apportionment of the compensation among the persons interested.

12. The 1st proviso to sub-section (1) of Section 11 of the Act provides that the Collector shall not make his Award without the previous approval of the appropriate Government. The 2nd proviso empowers appropriate Government to exempt specified class of cases from the requirement of approval.

13. In this case, in affidavit dated 12.7.2000 of Shri M.S. Yadav, HCS, Land Acquisition Officer, U.T. Chandigarh, it has been stated that formal approval u/s 11 of the Act is not available on the record meaning thereby that approval was not obtained by the Collector before making the Award. The question is whether failure to obtain approval of the Government will invalidate the Award ? In my view, the answer is in the negative. 1st Proviso to sub-section (1) of Section 11 of the Act has been inserted for the reason that the Award is an offer for compensation by the Government and the offer made on its behalf by the Collector, should have its approval. The proviso is intended as an equitable measure to safeguard the rights of the State and also to safeguard against the proposals for payment of inflated amount of compensation which might have been determined under influence of extraneous consideration.

14. In *N. Bommon Behram and Another v. The Government of Mysore* and *oilier* AIR 1970 Mys 89, in reference to proviso to Section 11 of the Land Acquisition as amended by the Mysore State Legislature which was similarly worded as the first

proviso to Section 11 of the Act, the High Court held that the main Section and the proviso have to be read together and have to be construed harmoniously. If the proviso is intended to act as a restraint on the power conferred by the main section, that power shall be construed as one which emerges after conformation with the requirements of the proviso. The opinion which the Land Acquisition Officer has to embody in the Award for the purpose of Section 11 is the opinion as modified by the order or direction, if any, given by the Government while approving the proposed amount of compensation. The High Court discussed the purport of the provision to Section 11 of the Act in paras 12 and 13 which read as under :-

" 12. There appears to be another reason why the State Legislature seems to have amended Section 11 of the Act by incorporating this proviso. It is not unlikely, though the cases may be very rare, that in fixing up the compensation the Land Acquisition Officer may be influenced by extraneous considerations in determining the amount of compensation and may fix compensation far in excess of the real market value of such property at the relevant date. The proviso is intended to safeguard against such vagaries and proposals for payment of inflated amount of compensation which might subject Government to heavy losses.

13. We have no doubt in our mind, from the propositions of law laid down by their Lordships and extracted above, that the action of the Collector in holding the enquiry relating to acquisition under the Act is an administrative proceeding in order to enable him to form his own opinion regarding the various matters to be embodied in the award. A party who is aggrieved by the award made by the Land Acquisition Officer, has got his remedy u/s 18 of the Act by praying for a reference so that the amount of compensation should be judicially fixed by a competent court. In this context, we should also note that when the land Acquisition Officer makes the award, the law does not provide any remedy to the State Government to challenge the compensation awarded under the award for the simple reason that the award is an offer of compensation on behalf of the State Government. The proviso is intended as an equitable measure to safeguard the rights of the State."

15. In *Ram Jiyawan v. State of U.P. and others* 1992 LACC 385, the Division Bench of Allahabad High Court discussed the scope of 1st proviso to Section 11 of the Act and held as under :-

"That the language of this proviso is apparently peremptory but its peremptory nature is diluted by the second proviso under which it is 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. From a combined reading of the two provisions, it is apparent that the observance of breach of the mandate contained in the first proviso is a matter between the Collector and the State Government. The person interested does not come in the picture. Therefore, such a person cannot assail

the validity of an award on the ground that previous approval of the Government or its appointed Officer was not taken. In other words, despite this apparent peremptory language the first proviso is recommendatory. Accordingly failure to obtain approval of the Government will not invalidate the award."

16. In *State of U.P. and Others Vs. Rajiv Gupta and Another*, State was aggrieved of the Award given by the Collector on the ground that prior approval of the Government was not obtained. On the petition filed by the State, Supreme Court held as under:-

"Section 11 postulates of conducting an enquiry and making the award by the Collector. The first proviso envisages that no award shall be made by the Collector under sub-section without the previous approval of the appropriate Government or such Officer as the appropriate Government may authorise in this behalf. It is common knowledge that exercising the power under the first proviso, the appropriate Government made rules or statutory orders or instructions whatever be the nomenclature, they have statutory operation giving authorisation to the Land Acquisition Collector to make an award up to a particular pecuniary limit without prior approval either of the appropriate Government or an officer authorised by the appropriate Government in that behalf. If the award exceeds the limit, prior approval of the State Government or authorised officer is mandatory. Any award made in violation thereof renders the award non est and void as it hinges upon the jurisdiction of the Land Acquisition Collector or Officer."

17. From the reading of the aforementioned judgments, it becomes clear that the mandate contained in the first proviso is a matter between the Collector and the State Government and an Award cannot be set at naught on the asking of a person interested on the ground that the previous approval of Government or its appointed officer was not taken by the Collector before making an Award. A person interested who is dissatisfied with the Award, has a remedy to seek enhancement of compensation by making an application to the Collector for making a reference to the Court for determination of compensation whereas Section 25 of the Act lays down that amount of compensation awardable by a Court shall, in no case, be less than what was awarded by the Collector u/s 11 of the Act meaning thereby that the State has no remedy to question that amount fixed by the Collector u/s 11 of the Act.

18. Learned counsel appearing on behalf of the petitioners then cited judgment of Delhi High Court in *Dr. Angela Fernandes v. Union of India and others* 1991 (1) RCR 1 (Del) : 991 LACC 23 (Del) to contend that the acquisition proceedings can be quashed on the asking of a person interested if the Award is found to be made in violation of first proviso to Section 11 of the Act. On carefully going through the judgment cited by the learned counsel for the petitioners, I find that it does support his contention. However, having regard to the judgment of Mysore High Court in *N. Bommon Bahrain's case* (supra), High Court of Allahabad in *Ram Jiyawan's case* (supra) and judgment of Supreme Court in

State of U.P. and others (supra), in which Award proposed was set aside at the instance of the State Government because previous approval of Government was not taken, I am unable to agree with the view taken in Dr. Angelo Fernandes" case (supra) because the same is not in conformation with the requirement of the main section and the proviso. Further, it is not the case of the petitioners or the respondents that the Award made by the Land Acquisition Officer exceeded the pecuniary limit, if any, fixed by the Union Territory and so approval of the Government was required. In this view of the matter, the acquisition proceedings are not liable to be quashed at the instance of the petitioners on the ground that the previous approval of the Government was not obtained.

19. The only question now left to be considered whether 15 days" clear notice u/s 9 of the Act was given or not. On going through the record, I find that the individual notices dated 1.2.1993 were given to the land-owners concerned which were duly received by them for hearing to be held on 24.2.1993. In response to the notices, they appeared and filed their claims and objections. In the objections filed by them, they nowhere alleged that notice given to them u/s 9 of the Act was not sufficient. In this view of the matter, this contention too is without merit.

20. Learned counsel appearing on behalf of the petitioners finally contended that almost all the petitioners have built their houses on the land and if they are dispossessed without providing them alternative accommodation or sites, they would be rendered homeless. It is contended that the respondents be directed to make alternative provision for the oustees. In reply, learned counsel for the respondents has submitted that so far no policy for re- settlement of oustees has been prepared if one is prepared and finalised, the same shall be enforced in accordance with law.

21. At present there being no policy in vogue for resettlement of oustees, no direction in this regard can be given. However, as and when any such policy is formulated, cases of petitioners would be considered in light thereof as submitted by counsel for the respondents.

22. For the reasons recorded above, there is no merit in this writ petition and the same is hereby dismissed. No costs.

23. Petition dismissed.