
(1996) 01 P&H CK 0115
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2027 of 1991

Surjan

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1899 — Section 11A

Citation : (1996) 112 PLR 769 : (1996) 3 RCR(Civil) 440

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

Bench : Division Bench

Advocate : M.S. Jain and Adarsh Jain, for the Appellant; R.N. Raina, D.A.G. for Respondent Nos. 1 and 2 and A.S. Gulia, for the Respondent

Judgement

G.S. Singhvi, J.—In these writ petitions which have been filed in the year 1991, the petitioners have prayed that the land belonging to them which was acquired vide notifications dated 6.7.1981 and 25.6.1982 be restored to their possession along with superstructures existing on it because the respondents have failed to pay/offer compensation for the disputed land. It has also been prayed that the respondents be directed to pay to the petitioners solatium at the rate of 30% and also award interest on the amount of compensation and solatium.

2. Petitioner Surjan (CWP No. 2027 of 1991) has alleged that he was owner of land measuring 37-Kanals 18 - marlas situated in the revenue estate of Dundahera, Tehsil and District Gurgaon, upon which he had constructed a residential house, installed a tubewell along with room and was cultivating the land. This land was acquired by the Government of Haryana by taking proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as the "Act")- Notification u/s 4 of the Act was issued on 6.7.1981 for acquisition of 299.51 acres of land, including the land belonging to the petitioner. Notification u/s 6 was issued on 25.6.1982. One award in respect of 165.72 acres of land including the land belonging to the petitioner was passed on 25.3.1983. Another

award was passed by the Land Acquisition Collector on 30.4.1984 in respect of the land measuring 110.07 acres. In the mean time, the petitioner and others had filed writ petitions challenging the acquisition made by the Government. These writ petitions were dismissed by the High Court on 12.10.1983. Special Leave Petitions filed by the petitioner and others were dismissed by the Supreme Court on 13.9.1988.

3. In this writ petition, the petitioner has pleaded that due to the failure of the Land Acquisition Collector to make a composite award of the entire land acquired by the Government, the impugned acquisition would be deemed to have lapsed. Moreover, when the compensation deposited by the Collector in the revenue deposit on 14.5.1984 was withdrawn on 29.12.1986 and the supplementary award to which a reference has been made in the first award 25.3.1983 has never been made. The petitioner says that the amount of compensation was paid to him only on 24.1.1989 and he is prepared to refund the amount along with interest in case possession of the land is restored to him. The petitioners has also prayed for award of solatium on the amount of compensation.

4. Reply to the writ petition has been filed on behalf of respondent No. 2, who has stated that the petitioner was not the owner of the land bearing Killa Nos. 19/2/1 and 19/2/2 of Rectangle No. 55 and in fact Shri Lila and Shri Siria were the owners of the said land. It has also been stated that there was one well and a Haudi and there does not exist any construction over the disputed land. According to the respondent No. 2, award in respect of the land of the petitioner was announced on 25.3.1985. Regarding withdrawal of the amount, it has been stated that the amount was lying unclaimed and the petitioner had refused to accept the same at the time of announcement of the award. Respondent No. 2 has stated that no supplementary award in respect of the trees etc. has been made and the supplementary award shall be announced in accordance with law.

5. In a separate reply, respondent No. 3 has stated that possession of the land was taken over by the Estate Officer, Haryana Urban Development Authority, on 25.3.1983 and it was handed over to the Haryana State Industrial Development Corporation, Udyog Vihar, Gurgaon vide office Memo No. 17505 dated 15.11.1983 and as per the Memo dated 9.11.1983 of the Chief Administrator, Haryana Urban Development Authority. Regarding Killa Nos 19/2/1 and 19/2/2, it has been stated that the same do not belong to the petitioner. Respondent No. 3 has further stated that Haryana State Industrial Development Corporation has allotted the plots to the various allottees and factories are in existence in Sectors 18 and 19, Gurgaon, and it is now impossible to restore the land in its original form to the petitioner. According to respondent No. 3, in respect of the land of the petitioner, the award was fully announced on 25.3.1983.

6. In Civil Writ Petition No. 3529 of 1991, eight persons have joined the cause of challenging the acquisition of the land on the ground that the award as required by the provisions of Sections 11 and 11-A of the Act has not been passed. Other facts of the writ petition are identical to the facts mentioned in Civil Writ Petition

No. 2027 of 1991 and it is not necessary to repeat the same. In the reply filed, the respondent No. 2 has stated that the award was pronounced by the Land Acquisition Collector in accordance with law but the petitioners refused to accept the amount of compensation offered to them and, therefore, the amount deposited in the revenue deposit had to be withdrawn. Respondent No. 2 has also stated that a petition u/s 18 of the Act has been filed and the same has been decided by the District Judge, Gurgaon, on 3.10.1989 and the enhanced compensation deposited in the Court is lying unpaid and the petitioners are free to withdraw the amount. Reply filed by respondent No. 3 is similar to the reply filed to Civil Writ Petition No. 2027 of 1991 and it is not necessary to repeat the same.

7. Maha Singh, Jagdish and Smt. Manhuri Devi have jointly filed Civil Writ Petition No. 15481 of 1991 with the allegations that they were owner of the revenue estate of Dundahera, Tehsil and District Gurgaon, and upon which the petitioners had constructed two rooms and installed tubewell etc. Other facts regarding acquisition vide notifications dated 6.7.1981 and 25.6.1982 have been stated and it has further been stated that the writ petition as well as the SLP filed by the petitioners challenging the legality of the notifications issued Under Sections 4 and 6 of the Act have been dismissed by this Court and the Supreme Court. The petitioners have made a grievance similar to the other two writ petitions by alleging that the Land Acquisition Collector cannot pass piecemeal award and his failure to comply with the provisions of Sections 11 and 11-A of the Act has resulted in the nullification of the acquisition proceedings and they are entitled to be given back the possession of the land.

8. We have heard Shri M.S. Jain, learned counsel for the petitioners, learned Deputy Advocate General and Shri A.S. Gulia, learned counsel appearing for the Haryana Urban Development Authority.

9. By placing reliance on the decision of the Supreme Court in *State of Kerala v. P.P. Hassan Koya* AIR 1968 SC 1201, and two decisions of this Court in *Ranjit Singh v. Union Territory of Chandigarh* (1983)85 P.L.R. 471, and *Sharan Pal Singh and others Vs. State of Punjab and others*, , Shri Jain argued that the failure of the Collector to pass composite award of the land acquired in the year 1982 has the effect of vitiating the award and when the land acquisition proceedings are treated as dropped, the petitioners have acquired a right to be restored with the possession of the property. Learned Counsel argued that although the Collector had declared that he would give a supplementary award for building, super-structures and trees etc., no such award has been passed, showing total non-compliance of the provisions of Section 11 and 11-A of the Act. Learned counsel submitted that withdrawal of the amount by the Land Acquisition Collector has also affected the legality of the impugned award. Shri Jain argued that once the compensation was deposited by the Land Acquisition Collector it was not open to the respondents to withdraw the amount of compensation. On the other hand, Shri Raina and Shri Gulia strenuously argued

that the writ petition filed after lapse of such a long time deserve to be dismissed on the ground of laches. Both the learned counsel argued that it is impossible to restore the possession of the property to the petitioners because the Haryana State Industrial Development Corporation has allotted the lands to different persons and without hearing them no order can be passed by the Court for restoring the possession of the property with the petitioners. Both the learned counsel submitted that the writ petitions are highly belated inasmuch as the petitioners have questioned the legality of the award etc. after a period of over 8 years of the passing of the first award and after about 7 years of the passing of the second award and in the absence of any explanations are liable to be dismissed as belated. Learned counsel submitted that failure of the Land Acquisition Collector to pronounce the award within the time does not have the effect of vitiating the entire award.

10. We have given our thoughtful consideration to the rival submissions of the learned counsel for the parties and in our opinion the writ petitions are liable to be dismissed only on the ground of laches. It is an undisputed position that the notifications dated 6.7.1981 and 25.3.1982 were challenged in the various writ petitions filed before this Court. Some such writ petitions were filed by the petitioners also. The writ petitions were dismissed by the High Court and the Special Leave Petitions were dismissed by the Supreme Court. With the dismissal of the petitions for Special Leave to Appeal, various objections of the petitioners regarding the validity of the acquisition must be deemed to have been finally adjudicated by the Court. After the issue of notification dated 25.3.1982, the petitioners have filed these writ petitions in the year 1991 on the ground that within the time specified in Section 11-A of the Act, the award has not been passed by the land Acquisition Collector in respect of the total land. In terms of Section 11-A, the award was required to be passed within 2 years of the coming into force of Section 11-A. Thus, the award should have been passed by 23.9.1986 because Section 11-A came into force w.e.f. 24.9.1984 and the petitioners were free to challenge the award and seek declaration to the effect that the award has lapsed due to failure of the Land Acquisition Collector to pass the award within 2 years period. However, the petitioners kept quiet for next five years after the expiry of the period specified in Section 11-A of the Act and there is not an iota of explanation of this time gap between the period specified in Section 11-A and the filing of the writ petition. This long delay in the filing of the writ petition without any explanation whatsoever coupled with the fact that the land has been further transferred to the Haryana State Industrial Development Corporation which has made allotment of the land to other individuals shows that the delay in the filing of the writ petition is fatal to the entertainability of the writ petition. When rights of third party have come to accrue, it is not possible for this Court to issue a mandamus for restoration of possession of the land. All those persons to whom the plots of land have been allotted by the Haryana State Industrial Development Corporation have acquired right over the disputed property and no order to their prejudice can be passed without hearing them and

it is not possible to hear them because they are not party to the writ petition. Even the Haryana State Industrial Development Corporation has not been added as a respondent although it was made respondent in the earlier writ petitions filed before this Court to challenge the validity of the notifications dated 6.7.1981 and 25.6.1982.

11. Notwithstanding the fact that we do not find any justification to issue a mandamus for restoration of the possession of the property to the petitioners, it appears to be just and proper to direct the Land Acquisition Collector to pronounce the award in respect of the remaining parcel of land as well as in respect of super-structure, trees etc. We, therefore, dismiss that writ petitions subject to a direction that the Land Acquisition Collector shall pronounce the supplementary award within three months from today and the amount payable to the erstwhile land-holders under the supplementary award shall be so paid to them within next one month.