
(1996) 05 P&H CK 0145
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4312 of 1995

The Hoshiarpur Improvement Trust	APPELLANT
Vs	
The President Land Acquisition Tribunal and Another	RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152
Land Acquisition Act, 1894 — Section 23A

Citation : (1996) 114 PLR 175

Hon'ble Judges : T.H.B. Chalapathi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : S.P. Jain, for the Appellant; G.S. Jaiswal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The land of respondents Nos. 2 and 3 was acquired by the Improvement Trust, Hoshiarpur, in order to carry out the development scheme framed by it. Initially, the scheme was for 40.93 Acres of land situated in the locality known as Premgarh in the revenue estate of Hoshiarpur. Sub-sequently, the total area was measured as 346 Kanals 7 Marias. Notification u/s 42 of the Punjab Town Improvement Act, 1922 was issued on 16.1.1978. Thereafter an award was made by the Land Acquisition Collector on 6.1.1979. A supplementary award was passed by the Land Acquisition Collector on 21.2.1979. Another supplementary award was made by him on 30.7.1979. The land owners filed applications u/s 18 of the Land Acquisition Act, 1894 read with Section 59 of the Punjab Town Improvement Act, 1922 (for short "the 1922 Act"). These applications were decided by the Land Acquisition Tribunal (Improvement Trust Hoshiarpur) on 17.3.1983 vide order (Annexure P.1). After about 11 years of the passing of the order (Annexure PI) the landowners (respondents Nos. 2 and 3) filed an application under Sections 151 and 152 of the CPC for correction of the order dated 17.3.1983 and by the impugned order the Tribunal has directed that the claimants shall be entitled to payment of solatium at the rate of 30 per cent

of the market value and interest at the rate of 9 per cent per annum on the enhanced amount of compensation for the first year and at the rate of 15 per cent for the subsequent period till the realisation of the enhanced amount.

2. Although in the writ petition the impugned order has also been challenged on the ground that the provisions of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Amendment) Act, 1984 are not applicable to the acquisition of lands under the Punjab Town Improvement Act, during the course of arguments learned counsel appearing for the petitioner did not press this point and, therefore, we do not consider it necessary to deal with the objection of the petitioner regarding the non-applicability of the provisions of Land Acquisition Act, 1894 (for short "the 1894 Act").

3. Submission of Shri Jain is that the Tribunal has committed a serious illegality in exercising the power under Sections 151 and 152 of the CPC to modify the award by grant of solatium and interest to respondents Nos. 2 and 3. Learned counsel argued that the Tribunal was not entitled to apply the provisions of Sections 151 and 152 of the Code because it is not a Court for the purposes of the Land Acquisition Act. Another argument of Shri Jain is that the Tribunal has altogether ignored the fact that the claimants had filed an application after almost 11 years of the passing of the impugned order dated 17.3.1983. The learned counsel argued that if at all respondent Nos. 2 and 3 were aggrieved by the order passed u/s 18 of the 1922 Act, the remedy available to them was to file an appeal before the High Court within a period of 90 days and once the period of limitation expired it was not competent for the Tribunal to have entertained the application filed by respondent Nos. 2 and 3 for correction/review. Shri Jain placed reliance on the decisions of the Supreme Court in *Babua Ram and Others Vs. State of U.P. and Another*, , and *Union of India (UOI) and Others Vs. Karnail Singh and Others*, .

4. Shri G. S. Jaiswal, appearing for the respondents Nos. 2 and 3, supported the impugned order by arguing that the claimants were entitled to compensation u/s 23(1A) of the Land Acquisition (Amendment) Act, 1984. He relied on a decision of the Division Bench of this Court in *The Jalandhar Improvement Trust v. Daljinder Singh and Ors.* 1992 P.L.J. 520.

5. Perusal of the impugned order shows that although the Land Acquisition Tribunal has considered the objection raised on behalf of the petitioner to the maintainability of the application filed by the respondent Nos. 2 and 3 u/s 151 and 152 of the Code of Civil Procedure, the same has been brushed aside on the ground that a person whose land has been acquired is entitled to the benefit of the amendment made in the Land Acquisition Act and no limitation has been prescribed for filing of the application by the land owners. On merits, the learned Tribunal held that the land-owner was entitled to payment of solatium @ 30% of the market value and interest @ 9% per annum on the enhanced amount of compensation for the first year and @ 15% for the subsequent period.

6. In our opinion, the reason assigned by the Tribunal for entertaining the application filed by the respondent Nos. 2 and 3 and its order granting relief to the respondents is patently illegal and deserves to be set aside.

7. In *Babu Ram and Ors. v. State of U.P.* (supra), their Lordships of the Supreme Court interpreted the provisions of Sections 11, 18, and 28-A and held that limitation period of three months u/s 28-A expires with the expiry of three months from that date of award u/s 26 and thereafter no remedy is available to the land-owners. In that case, it has also been held that Section 28-A(1) is prospective in nature and does not apply to an award made prior to 24.9.1994. It has further been held that Section 28-A applies to the award made under part-III only and does not apply to the judgment and decree of the Appellate Court u/s 54.

8. In *Union of India (UOI) and Another Vs. S.S. Ranade*, a question similar to the one raised in this petition arose for consideration before the Supreme Court. In that case, the award was passed by the Land Acquisition Officer on 17.12.1981. A reference was made to the Civil Judge (Senior Division), Jalgaon, on an application filed by the claimants. The reference Court passed a decree dated 25.10.1983 and enhanced the compensation. No appeal was thereafter preferred. However, after coming into force of the Land Acquisition (Amendment) Act, 68 of 1984, the claimants made an application to the reference Court for awarding the enhanced solatium, additional compensation and interest under the amended Act. The Civil Judge allowed the application vide order dated 31.3.1986. The High Court summarily dismissed the appeal filed by the State. While reversing the orders of the Civil Judge and the High Court of Bombay, their Lordships held :-

"It would thus be seen that the additional amounts envisaged under Sub-sections (I-A rules and (2) of Section 23 are not part of the component of the compensation awarded under Sub-section (1) of Section 23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power toward any interest u/s 28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the Court as envisaged under the proviso.

xx xx xx xx xx xx

thus, it would be seen that a decree having been made u/s 26(2), the civil court is left to correct only either clerical or arithmetical mistakes as envisaged expressly u/s 13-A of the Act or u/s 152 C.P.C. Though Section 151 C.P.C. gives inherent power to the Court, it is intended only to prevent abuse of the process of the Court or meet the ends of justice. The present is not a case of such nature. Further, since Section 23 is an express power under which the Civil Court has been conferred with the jurisdiction to determine compensation, and in

addition to the market value certain percentage of the amount is directed to be awarded as envisaged under Sections 23(1-A) and 23(2) and the interest component u/s 28, the invocation of Section 151 C.P.C. by necessary implication stands excluded.

"Thus, we hold that the civil court had inherent lack of jurisdiction and it was devoid of power to entertain the application to award additional benefits under the Amendment Act. The order thereby is clearly a void order, the High Court has not applied its mind to this crucial consideration but summarily dismissed the appeal."

9. In *State of Punjab and Another Vs. Babu Singh and Others*, their Lordships of the Supreme Court reversed an order passed by this Court for grant of additional amount of compensation u/s 23(1-A) of the Land Acquisition Act on the basis of an application filed under Sections 151 and 152 of the Code of Civil Procedure. While reversing the order of the High Court, their Lordships took notice of the fact that notification u/s 4(1) was issued on 11.12.1974 and the award of the district court was dated 23.2.1978 and held :-

"Under these circumstances, the Land Acquisition (Amendment) Act 68 of 1984 has no application and there is no error in the award or the decree as initially granted. The High Court was clearly without jurisdiction in entertaining the application under Sections 151 and 152, C.P.C., to award the additional benefits under the Amendment Act 68 of 1984 or to amend the decrees already disposed of".

10. In *Mir Fazeelath Hussain and others Vs. Special Deputy Collector Land Acquisition, Hyderabad [OVERRULED]*, a three judges Bench of the Supreme Court again dealt with the scope of Sections 11, 18, 23, 25, 26, 28 and 30 of the Act and after making reference to an earlier decision in *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.*, held that the interest visualised in Section 28 of the Act is not a part of compensation and so not a part of the award. It also held that solatium too is not a part of the award.

11. In *Special Land Acquisition Officer, Malaprabha Dam Project, Saundatti and Others Vs. Madivalappa Basalingappa Melavanki and Others*, the Supreme Court has again held that where the award was passed on 14.12.1981 much prior to the amendment of the Land Acquisition Act, the claimants are not entitled to 30% solatium on the enhanced compensation and additional amount @ 10% annum.

12. In view of the latest decisions of the Supreme Court, it is not possible to accept the contention of Shri Jaiswal regarding applicability of Section 23(A) on the basis of judgment in *Jalandhar Improvement Trust v. Daljinder Singh and Ors.* (supra).

13. For the reasons mentioned above, we hold that respondent No. 1 acted without jurisdiction in entertaining the application filed by the respondents under

Sections 151 and 152 of the CPC and in passing the impugned order. Consequently, the writ petition is allowed and the impugned order is quashed. If respondent Nos. 2 and 3 have received any amount under the impugned order, they should refund the same along with interest to the petitioner within a period of two months.