
(2008) 04 P&H CK 0011
In the Punjab And Haryana At Chandigarh

The Jalandhar Improvement Trust	APPELLANT
Vs	
The Improvement Trust Tribunal and Others	RESPONDENT

Date of Decision : 21-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 28A

Citation : (2008) 152 PLR 769 : (2008) 4 RCR(Civil) 687

Hon'ble Judges : Sabina, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of Civil Writ Petition Nos. 12708 to 12717 of 1999 as common question of law and fact are involved in these petitions. For the purposes of this order, facts are being taken from C.W.P. No. 12708 of 1999. This petition is directed against order dated 11.9.1997 (Annexure P.1) passed by the Improvement Trust Tribunal, Jalandhar declining the re-determination of compensation u/s 28-A(3) of Land Acquisition Act, 1894. An application for re-determination of the award has been made by the petitioner Trust.

2. The matter had earlier come up before a Division Bench of this Court and the same was dismissed vide order dated 1.4.2002 which reads thus:

No one has put in appearance on behalf of respondent No. 2 (claimants) despite publication. Learned Counsel for the petitioner argues that as the award has been signed only by the President, it was non-est in the eyes of law and, therefore, not enforceable. We put to the learned Counsel for the petitioner as to whether the claimants were, infact, entitled to the benefits of enhanced compensation. It is not denied by the learned Counsel that the claimants were entitled to the enhanced compensation. We are, therefore, disinclined to interfere in this petition in exercise of our extra ordinary writ jurisdiction under Articles 226/227 of the Constitution of India.

Dismissed.

3. The petitioner had challenged the afore-mentioned order in appeal and the Hon'ble the Supreme Court vide its order dated 22.11.2005 passed in C.A. Nos. 6970- 6979 of 2005 (Jalandhar Improvement Trust v. Improvement Trust Tribunal, Jalandhar and Ors.) held as under:

It is brought to our notice that the Tribunal which assesses the compensation payable under the Land Acquisition Act consists of three members namely, the President and two Assessors. This is pursuant to Section 60 of the Punjab Town Improvement Act, 1922. It was averred in paragraph 4 of the Writ Petition that the impugned award dated 11.9.1977 was assessed, prepared and signed only by the President of the Tribunal and not by the majority of the members. The award made by the Tribunal has been brought to our notice and it has been emphasized that apart from the fact that it has been signed only by the President; even the language of the award indicates that the award has been heard and made by the president only.

4. The High Court dismissed the writ petition in limine. There is no discussion in the order of the High Court regarding the aforesaid averment. Since there are clear averments in the writ petition challenging the legality and validity of the award, the High Court ought to have atleast briefly noticed the submissions urged before it and passed an order. Unfortunately, neither was any counter affidavit filed in the High Court, nor any counter affidavit has been filed in this Court.

In the circumstances, we consider it proper that the order of the High Court should be set aside and the matters be remitted to the High Court for disposal of the writ petition in accordance with law after notice to the respondents.

The order of the High Court dated 1.4.2002 in C.W.P. Nos. 12708-12717 of 1999 is set aside and the matters are remitted to the High Court for fresh disposal in accordance with law.

perusal of the record shows that the respondents have been served by publication and no one has put in appearance on behalf of respondent No. 2. It is, however, pertinent to notice that the Tribunal did not issue any notice to respondent No. 2 for deciding the legal question raised before it by the petitioner as is evident from the perusal of the impugned order dated 11.9.1997 (Annexure P.1).

5. Mr. Sanjay Majithia, learned Senior Counsel for the petitioner has relied on Section 60 of the Punjab Town Improvement Act, 1922 (for brevity "the Act") and has argued that the Tribunal which assesses compensation under the Act must be comprised of three members namely President and two Assessors. Learned Counsel has maintained that the afore-mentioned position is also explicit from the judgment of Hon'ble the Supreme Court in the case of Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt) (Dead) and Another, . On

merits he has submitted that the award has been signed only by the President of the Tribunal and the Assessor are not even present.

No one has put in appearance on behalf of respondent No. 2.

6. After hearing the learned Counsel, we are of the considered view that there is no merit in the instant petition. Section 65(1)(b) of the Act squarely answers the question which has been raised by the petitioner before us and the same reads thus:

65. Award to Tribunal how to be determined.-

(1) For the purpose of determining the award to be made by the tribunal under the Land Acquisition Act, 1894-

(a) if there is any disagreement as to the measurement of land, or to the amount of - compensation or costs to be allowed, the opinion of the majority of the members of the tribunal shall prevail;

(b) notwithstanding any contained in the foregoing clause, the decision on all questions of law and title and procedure shall rest solely with the president of the Tribunal, and such questions may be tried and decided by the President in the absence of assessors unless the president considers their presence necessary.

(c) The President of the Tribunal may record evidence on any matter in the absence of assessor unless he considers their presence necessary.

7. The perusal of the afore-mentioned provision shows that questions ordinarily disagreement concerning measurement of land or to the amount of compensation or costs are required to be resolved by the opinion of majority of the members of the Tribunal. However, there is non-obstante Clause in Section 65(1)(b) of the Act stating that decision on questions of law, title and procedure is to rest solely with the President of the Tribunal. The provision is explicit that such question could be tried and decided by the President of the Tribunal in the absence of Assessors unless the President considers their presence necessary. Clause (c) of the Section 65(1) of the Act makes it further clear that the President of the Tribunal could record evidence on any matter even in the absence of Assessors unless he considers that the presence of such members is necessary. In the present case the Tribunal had merely decided a legal question as to whether a reference made to the Tribunal was competent and maintainable which is squarely within the sweep of Section 65(1)(b) of the Act. Even if it is assumed for the same of arguments that the order passed by the Tribunal has been signed by the President it would still be a valid order because it is consistent with the requirements of Section 65(1)(b) of the Act.

8. The judgment of Hon''ble the Supreme Court in the case of Parkash Wanti and Anr. (supra) on which reliance has been placed by the Counsel for the petitioner is distinguishable because there the award was concerning the amount of compensation which was payable to the claimants whereas in the present case a

pure question of law was decided by the Tribunal. The question raised before the Tribunal was whether the reference made to the Tribunal was competent and maintainable. The President of the Tribunal did not consider it necessary even to issue notice to respondent No.2 but proceeded first to determine the afore-mentioned question.

9. This position is squarely covered by Section 65(1)(b) of the Act. It was for the afore-mentioned reasons that there is no debate on Section 65(1)(b) of the Act before Hon'ble the Supreme Court in that case. Therefore, we are of the view that the impugned order passed by the Tribunal does not suffer from any legal infirmity warranting interference of this Court. Accordingly we uphold the impugned order and dismiss the writ petitions.

A copy of this order be placed on the files of all the connected cases.