

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RFA No. 2591 of 1999 (O&M)

Date of decision : 18.8.2015

Kehar Singh

.. Appellant

versus

State of Haryana

.. Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. R. S. Longia and Mr. Yogesh Saini, Advocates,
for the landowners.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Rajesh Bindal, J.

This order will dispose of appeals bearing RFA Nos. 2591, 2786, 2787, 3018, 3019, 3020, 3207, 3208 of 1999, 1220 of 2002, and 3233 to 3238 of 2006, as common question of facts and law are involved therein.

The landowners are in appeal against the award of the learned Reference Court dated 12.5.1999 vide which the applications filed by them claiming compensation under Section 48(2) of the Land Acquisition Act, 1894 (for short, 'the Act'), on account of damages suffered by them for withdrawal of notification for acquisition, were dismissed.

Learned counsel for the appellants submitted that initially the notification under Section 4 of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963, was issued on 22.1.1969. Due to this reason, the landowners could not cultivate their land properly. They could not alienate the property and have suffered damages on account of various notifications issued by the Government. Finally, notification under Section 4 of the Act was issued on 3.11.1980 and Land Acquisition Collector announced the award on 2.7.1982. The earlier notifications were withdrawn by the State without issuance of any notice or munadi. As on account of the earlier successive notifications, the appellants could not make proper use of the land dealt with therein, they need to be compensated under Section 48(2) of the Act.

On the other hand, learned counsel for the State submitted that notifications referred to by the appellants were not withdrawn by the State, hence, the provisions of Section 48 of the Act were not applicable. She further submitted that when the land was acquired whatever compensation the appellants wanted to claim should have been claimed by them by filing the objections. The same having not been done, at a subsequent belated stage, the claim by filing separate application under Section 48(2) of the Act, was not maintainable.

Heard learned counsel for the parties and perused the paper book.

Section 48 of the Act is reproduced as under:-

“48 Completion of acquisition not compulsory, but compensation to be awarded when not completed.

- (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

Similar matter came up for consideration before Hon'ble the Supreme Court in Rajinder Singh Bhatti and others vs State of Haryana and others 2009 (11) SCC 480, where the following two issues were framed:-

“(one) Whether in view of the decision of the government in not approving the award proposed by the Collector, the award could not be made within the

period of two years from the date of publication of declaration (final notification under Section 6) and the acquisition of land lapsed, would such lapse of acquisition proceedings amount to withdrawal from the acquisition by the State Government under Section 48(1) of the Act ?

(two) Whether the decision of the State Government for withdrawal from the acquisition under Section 48 (1) is mandatorily required to be published in the official gazette ?”

The answer to the aforesaid issues were given as under:-

“26. As noticed above, the Land Acquisition Collector moved the government seeking its approval for the proposed award. This was imperative as per the first proviso to Section 11. The government considered the matter and did not approve the proposed award. When no such approval was granted by the government, the Collector could not have made the award and in fact he did not. As a result thereof, the acquisition proceedings lapsed. The lapse of acquisition proceedings in the circumstances under Section 11-A cannot and would not amount to withdrawal from acquisition by the government under Section 48(1). We answer the point (one) in negative.

re : point (two)

27. The question now needs to be considered is: whether the decision of the Government for withdrawal of acquisition under Section 48(1) is required to be published in official gazette ? It is true that Section 48 does not in express terms require the decision of the government for withdrawal of acquisition to be published in the official gazette. In Abdul Majeed, this Court has held that there should be publication of the withdrawal of the notification published under Section 4(1) and declaration under Section

6 by exercising power under Section 48(1). Even on first principles, such requirement appears to be implicit. The Act provides for the publication of notification and declaration under Sections 4 and 6 of the Act in official gazette. Obviously the withdrawal from land acquisition proceedings by taking resort to Section 48(1) of the Act also must be in the like manner. As a matter of fact, this aspect is no more res integra. In the case of Larsen & Toubro Ltd. vs State of Gujarat and Ors., (1998) 4 SCC 387, the identical contentions which have been advanced before us by the senior counsel were raised in that case. Section 21 of the General Clauses Act, 1897 was also pressed into service there. This Court considered:

"It was submitted by Mr. Salve that Section 48 of the Act did not contemplate issue of any notification and withdrawal from the acquisition could be by order simpliciter. He said that Sections 4 and 6 talked of notifications being issued under those provisions but there was no such mandate in Section 48. It was thus contended that when the statute did not require to issue any notification for withdrawal from the acquisition, reference to Section 21 of the General Clauses Act was not correct. Section 21 of the General Clauses Act is as under:

"21. Power to issue, to include power to add to, to amend, vary or rescind, notifications, orders, rules or bye-laws.-- Where by any Central Act, or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Mr. Salve said that Section 21 expressly referred to the powers being given to issue notifications etc. under an Act or Regulation and under this that power included power to withdraw or rescind any notification in a similar fashion. It was therefore submitted that when Section 48 did not empower the State Government to issue any notification and it could not be read into that provision that withdrawal had to be issued by a notification. His argument, therefore, appeared to be that on correct interpretation of Section 21 of the General Clauses Act before reaching the stage of Section 48, the State Government could withdraw notifications under Sections 4 and 6 of the Act by issuing notifications withdrawing or rescinding earlier notifications and that would be the end to the acquisition proceedings. We do not think that Mr. Salve is quite right in his submissions. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage suffered by the owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that withdrawal from acquisition has to be notified.

Principles of law are, therefore, well settled. A notification in the Official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under Section 48 of the Act of any land of which possession has not been taken".

After answering the aforesaid two issues, in the manner referred to above, Hon'ble the Supreme Court opined that since there was no decision to withdraw the notification for acquisition by way of publication in the official gazette, the same will not amount to withdrawal from acquisition by the State Government within the meaning of Section 48(1) of the Act and under those circumstances, an application filed under Section 48(2) of the Act was held to be not maintainable. In the case in hand, it has nowhere been pointed by learned counsel for the appellants that there was any notification issued by the State Government withdrawing the land from acquisition and the same was published in terms of Section 48(1) of the Act. The earlier notification(s) issued, merely lapsed.

Hence, there is no illegality in the award of the learned Court below dismissing the application filed under Section 48(2) of the Act. There is no merit in the present set of appeals. They same are accordingly dismissed.

18.8.2015
vs

(Rajesh Bindal)
Judge

(Refer to Reporter)