

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.1271 of 2011 (O&M)

Date of Decision: August 19, 2015

M/s Mohindra Cranks Private Limited

.....Petitioner

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE JASPAL SINGH.

Present: Mr.V.K.Sachdeva, Advocate for the petitioner.

Mr.Rajesh Bhardwaj, Additional AG, Punjab.

Mr.G.S.Attariwala, Advocate, for respondent No.2.

-:-

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

This case has a chequered history. The petitioner approached this Court challenging the notice directing to demolish a part of the structure of its functional industrial unit, for the purpose of widening of Haibatpur road to 60 feet. The necessity to issue that notice had arisen for the purported compliance of the order dated 23.11.2009 passed by this Court in CWP No.18952 of 2006 (M/s Kamla Dials and Devices Limited versus State of Punjab and others) (P-10) for the implementation of Master Plan of Derabassi-2031.

[2] There were series of obstacles, in the widening of the above-stated road as several industrial units, residential houses and upcoming projects of the land developers, were required to be demolished/shifted.

[3] Since the order dated 23.09.2009 in M/s Kamla Dials and Devices Limited case (supra) had attained finality, this Court issued varied directions from time to time in the second round of litigation, to ensure the implementation of that order. In terms of these orders, most of the affected parties were persuaded and/or directed to make the land available for widening of the subject road.

[4] The State Government was further directed to take decision as a matter of policy as to how the judgment of this Court in M/s Kamla Dials and Devices Limited case (supra) would be implemented simultaneously protecting the individual rights of affected parties as most of them were not even party-respondents in the cited case.

[5] The State Government then took a policy decision dated 06.07.2012 and keeping that in view, this Court passed the following orders on 19.07.2012:-

“..... Ms.Monica Chhibber Sharma, DAG, Punjab has placed on record affidavit of Vinod Kumar Bhalla, Special Secretary, Department of Local Government, Punjab, alongwith a copy of the policy decision dated 06.07.2012 (Annexure R-1) purported to have been taken by the State Government. The policy decision (Annexure R-1) contemplates that the widening of the existing roads as per the provisions of the Master Plan shall be carried out on quid-pro-quo basis and in cases where projects have been established after approval of the Competent Authority along a road proposed for widening, the owner shall be

compensated in the form of FAR in the remaining project area or any other project/land within the same Municipal area.

Counsel for the parties, however, inform that the subject area has been notified in the Master Plan as 'mixed use area' which includes both 'residential' as well as 'industrial'. It would mean that clause (iii) of the Policy decision dated 06.07.2012 falls short to address the problem as the land-owners who are running industrial units would not be keen to be compensated in the form of FAR. The State Government needs to evolve some other methodology of 'compensating' the industrialists, if it wants to follow the principle of quid pro quo. The builders/developers, however, shall abide by clause (iii), referred to above.

Since sufficient time has already elapsed, let (i) State Government; (ii) its District Administration; (iii) GMADA; and (iv) Municipal Council, Dera Bassi work in unison and commence the work of widening of Habatpur Road, for which directions issued by the Court have already attained finality.

We make it clear that the widening work shall be started immediately as the nature or mode of compensation to different (types of) owners can be determined meantime.

Meanwhile, we direct the first petitioner,

namely, M/s Raglan Infrastructure Limited (in CWP No.4011 of 2010) to expedite the ongoing construction of the flats to be provided by it as an alternative to those flat-owners who are likely to be uprooted for the widening of aforesaid road. The construction of alternative flats shall be completed within a period of six months and no period beyond that shall be granted.....”

[6] This Court was thereafter apprised on 21.01.2013 that the petitioner-company had also made available the strip of land for the subject-road. The following order passed on that day:-

“..... Learned counsel for the petitioner states that as per the telephonic instructions received by him from the Managing Director of the petitioner-company, the factory building has been demolished up to 15 feet from the right side berm of the road and that the petitioner shall create no hindrance against taking possession or construction of the road on its vacated portion. He further states that the afore-said land has been made available without prejudice to the rights of the petitioner to seek compensation or special damages as may be admissible in accordance with law.....”

[7] The case was taken up on short intervals so as to monitor the ongoing construction of the road.

[8] While the builders/land-developers agreed to provide the space for widening of the road subject to they being compensated with increased FAR, the petitioner wanted compensation for its land/structure which was suggested to be determined vide order dated 21.01.2014, the relevant part whereof reads as follows:-

“..... The question that arises for consideration is what should be the mechanism for determination of the compensation to the petitioner and other factory/land-owners who may be found entitled to?

We are of the view that it would be appropriate to appoint One Member Tribunal comprising a retired District and Sessions Judge, to which the petitioners have no objection. We would impress upon the State Government also to agree to the suggestion for which Mr.Bajwa, Additional Advocate General, seeks and is granted time to have instructions.....”

[9] The above-stated proposal was not adhered to, hence, the following directions were issued on 21.04.2014:-

“..... We, therefore, as an interim measure, direct the Land Acquisition Collector, as may be authorized by the State of Punjab, to determine compensation amount and pass an award before the next date of hearing. This exercise shall be undertaken without prejudice to the rights of the parties.....”

[10] On July 11, 2014, the Land Acquisition Collector was further directed to decide the compensation claim of other land-owners as well.

[11] On 29.04.2015, learned State counsel informed this Court that Land Acquisition Collector has determined the quantum of compensation and the matter required approval from the State Government.

[12] At this juncture, the Director-cum-Special Secretary, Department of Local Government, Punjab, has filed the affidavit dated 26.05.2015 alongwith a communication dated 18.05.2015 (R-1/1) sent by the Executive Officer, Municipal Council, Derabassi to the Director, Town Planning Department of Local Government, Punjab.

[13] The Municipal Council while forwarding the 'draft award' has recommended the State Government vide its letter dated 18.05.2015 (R-1/1) that:-

“..... It is worth mentioning here that the infrastructure of town is upgraded with widening of roads and the same is in the public interest. The Municipal Council is not personally benefitted in any way if the roads are widened. On the other hand, the land owners get the benefit in form of floor area for the area taken under road widening. Further, there is a huge value addition of property of the owners as they are benefitted since their land qualified for approval of project and also ease of movement of traffic etc.

Accordingly, it would be fair and in the

public interest if the land owners whose portion of land comes under road widening are compensated in the form of FAR....”

(emphasis by us)

[14] While we do not find any final decision taken by the State Government pursuant to the above-stated suggestion made by the Municipal Council, the Director-cum-Special Secretary, Department of Local Government has, vide her above-stated affidavit, requested this Court as follows:-

“..... That in view of the submissions made above, it is humbly requested that the Hon'ble Court may consider and allow compensating the land-owners in the form of additional FAR as per the Policy guidelines dated 06.07.2012 and kindly dispose of the writ petition accordingly.....”

[15] It is in this backdrop that we have heard learned counsel for the parties at a considerable length and gone through the record.

[16] It appears to us that the suggestion given by Director-cum-Special Secretary, Department of Local Government, Punjab, to compensate the affected land-owners by additional FAR as per the Policy guidelines dated 06.07.2012 cannot be applied uniformly in all the cases. The increased FAR is surely beneficiary for the land-developers whose constructed area stands increased without requirement of additional land and thus, the prospects of marketability increases manifold.

[17] The FAR may also be an effective mode of compensation for the owner(s) of residential houses whose buildings have been demolished in part, as with the increased

FAR, they may increase the area of construction on the left out plot or can be permitted to change the user of the site from residential to commercial etc., subject to other restrictions.

[18] In the case of a running industry, the increased FAR is no solace except where the entrepreneur decides to change the use of the site for a purpose other than 'industry'. There can be several modes of compensation to the entrepreneurs also, if they are financial constrains in paying monetary compensation. Such alternative modes of compensation are to be evolved by the State Government in the light of the orders already passed by this Court. It is quite possible that a renewed and alternative mode of compensation, other than the increased FAR, is acceptable to the petitioner and other affected industries.

[19] There can possibly be no legal impediment for the Competent Authority in adopting different modes of compensation, also keeping the fact in view that the petitioner, other industries and owners of properties have also been enormously benefited with the widened road and there is indeed value addition of the properties.

[20] We, thus, dispose of this writ petition with a direction to the State Government to re-visit the whole issue and evolve more than one modes of compensation including the revised FAR. The nature of compensation, having regard to the facts and circumstances of each case can vary. The mode of compensation must effectively address the need of affected land-owners. Such a comprehensive policy decision would further set an example for the State to carry out such like development activities in other parts of the State as well.

[21] There has been enough delay in resolving the issue. We, therefore, direct the State Government that the needful be done within a period of four months from the date of receiving a certified copy of this order. If the petitioner or other affected land-owners are dissatisfied with the manner or quantum of compensation, as may be offered to them, they may accept the same without prejudice to their legal rights.

[22] Ordered accordingly.

[23] Dasti.

[SURYA KANT]
JUDGE

August 19, 2015
mohinder

[JASPAL SINGH]
JUDGE