

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

RFA No. 10367 of 2014 (O&M)

Date of decision : 5.11.2015

The State of Haryana and others

.. Appellants

VS

Sher Mohd.

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Shivedra Swaroop, Assistant Advocate General, Haryana.

Rajesh Bindal J.

1. This order will dispose of appeals bearing RFA Nos. 10367, 10369 to 10378 of 2014, as common questions of law and facts are involved therein.

2. Briefly, the facts of the case are that vide notification dated 22.8.2003, issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), State of Haryana sought to acquire land situated in the revenue estate of village Sundaka, Tehsil Nuh, District Mewat, for remodeling and construction of Nuh Drain. It was followed by notification under Section 6 of the Act. The Land Acquisition Collector (for short, 'the Collector') vide award dated 7.2.2011 has assessed compensation for the acquired land @ ₹ 20,00,000/- per acre. Dissatisfied with the award of the Collector, the land owners filed objections. On reference under Section 18 of the Act, the learned court below vide award dated 31.3.2014, upheld the award of the Collector as far as valuation of the acquired land is concerned, however, the landowners were held entitled to 12% additional amount from date of possession till date of award i.e. 16.12.2010. It is this award which has been impugned in the present set of appeals by the State.

3. Learned counsel for the appellants submitted that the Court below has rightly dismissed the reference petitions filed by the landowners for enhancement of compensation for the acquired land,

however, the landowners were wrongly held entitled to additional amount calculated @ 12% per annum from date of possession till date of award i.e. 16.12.2010.

4. It was further submitted that nothing could be paid to the landowners for any period prior to the date of notification under Section 4 of the Act. All what they could claim are the damages, that too, in case they are able to prove that the possession was taken prior to the issuance of notification under Section 4 of the Act. The learned court below has wrongly interpreted the judgment of Hon'ble the Supreme Court in Special Land Acquisition Officer vs Karigowda and others, (2010) 5 SCC 708, as interest for any period prior to the issuance of notification under Section 4 of the Act, cannot be awarded as the same has to be in the form of damages for use and occupation of land.

5. Heard learned counsel for the State and perused the relevant referred record.

6. As far as the issue regarding damages on account of use and occupation of the land is concerned, it is not in dispute that possession of the land was taken prior to issuance of notification under Section 4 of the Act. The landowners have led some evidence to prove that possession of the land was taken prior to issuance of notification under Section 4 of the Act. It has been held by Hon'ble the Supreme Court in Karigowda's case (supra), that interest for any period prior to the issuance of notification under Section 4 of the Act, cannot be awarded as the same has to be in the form of damages for use and occupation of land. The relevant part of the said judgment is extracted below:-

“We are bound by the decision of the larger Bench, in R. L. Jain case, which had considered Satinder Singh, on which the reliance has even been placed by the claimants in the present appeal. The larger Bench after detailed discussion on the subject rejected the claim for payment of interest claimed by the respondents in those cases prior to the date of issuance of the notification under Section 4 of the Act.

As is evident from the above dictum of the Court, despite dispossession, the title continues to vest in the landowners and it is open for the land owners to take action in accordance with law. Once notification under Section 4(1) of the Act has been issued and the acquisition proceedings culminated into an award in terms of Section 11, then alone the land vests in the State free of any encumbrance or restriction in terms of provisions of Section 16 of the Act. The court, in situations where possessions have been taken prior to issuance of notification under Section 4 (1) of the Act, can direct the Collector to examine the extent of rent or damage that the owners of land would be entitled to, the provisions of Section 48 of the Act would come to aid and the court would also be justified in issuing appropriate direction. This was the unequivocal view expressed by the Court in R.L.Jain case as well. This legal question is no more open to controversy and stands settled by this court. We would follow the view taken and accept the contention of the appellant-State that the reference court as well as the High Court could not have granted any interest under the provisions of the Act, for a date anterior to the issuance of notification under Section 4 of the Act. However, following the dictum of the Bench in R.L.Jain case, we direct the Collector to examine the question of payment of rent/damages to the claimants, from the period when their respective lands were submerged under the back water of the river, till the date of issuance of the notification under Section 4(1) of the Act, from which date, they would be entitled

to the statutory benefits on the enhanced compensation.”(emphasis supplied)

7. Reference can also be made to judgments of this Court in RFA No. 4609 of 2006 – State of Haryana and others vs Ram Kumar and others, decided on 11.5.2011 and RFA No. 4612 of 2011 Dayanand and others vs State of Haryana and others, decided on 23.1.2012.

8. In terms of the aforesaid judgments wherein it has been opined that for the period prior to issuance of notification under Section 4 of the Act, no interest can be granted even if possession of land had been taken earlier and only rent or damages can be claimed, the impugned award of the learned Court below is set aside. The landowners shall be entitled to rent or damage for use and occupation of the land from the date of their dispossession till the date of notification under Section 4 of the Act. The land owners shall file application before the Collector concerned to claim rent or damages for use and occupation of the land by the State for the aforesaid period. These applications may be filed upto 30.1.2016. If such applications are filed then the Collector shall consider the same and award such amount to the landowners as may be payable in accordance with law. The applications shall be disposed of finally within four months of filing, after affording personal hearing to the parties.

9. The appeals are disposed of in the manner indicated above.

10. Copy of the order be sent to the respondents, as no one has appeared for them.

5.11.2015
vs

(Rajesh Bindal)
Judge

(Refer to Reporter)