

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

CWP No.16531 of 2014 (O&M)
Date of decision: February 23, 2017

Rajvir Singh Punia

---Petitioner

Versus

State of Haryana and another

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Amit Jain, Advocate for the petitioners.

Mr.Ankur Mittal, Addl. A.G.,Haryana.

HARINDER SINGH SIDHU, J.

This judgment shall dispose of two writ petitions i.e. CWP Nos.16531 and 19481 of 2014, as similar issue is involved in both the petitions.

For the purpose of deciding the issue, the facts are being taken from CWP No.16531 of 2014.

The petitioner is the owner in possession of land measuring 4½ acres in village Ladwa, Tehsil and District Hisar. On the said land, the petitioner has set up an orchard under the National Horticulture Mission Scheme after receiving financial aid from the State Government.

State of Haryana issued a notification dated 05.02.2013 (Annexure P-1) under Section 4 of the Land Acquisition Act, 1894 (for short '1894 Act') proposing to acquire 13.82 acres of land for the public

purpose of construction of 15700 ft. long channel namely, 'New Ladwa Minor' from the Siwani Feeder in villages Satrod Kalan and Ladwa. The said notification included 7 Kanals 2 Marlas of land of the petitioner falling in Khasra No.77//6/1(0-12), 15/2(0-12), 16/1(0-12), 28/2(0-12), 78//10/2(0-18), 11/1(0-16), 20/2(0-16), 21/1(0-16), 98/1/1(0-16), 99//5/2(0-12). Notification under Section 6 of the Act was issued on 25.09.2013 (Annexure P-2). Award was passed by the Land Acquisition Collector on 31.07.2014 (Annexure P-6), in which compensation was awarded as per the provisions of the 1894 Act.

Though, the petitioner has challenged the notifications under Sections 4 and 6 as also the Award, however, in view of the undoubted public purpose of the acquisition, at the time of arguments, Ld. Counsel for the petitioner confined his arguments only to the extent that as the award has been passed after coming into force of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act'), as per provisions of Section 24(1)(a) thereof, the compensation had to be determined in accordance with the 2013 Act.

Ld. Counsel for the respondents argued that the compensation was awarded in terms of the provisions of 1894 Act as the land owners had themselves filed affidavits before the Land Acquisition Collector that the award may be announced at the rates which had already been fixed by the Commissioner, Hisar Division, Hisar, as they were in keen need of water. He, accordingly, contended that the petitioner having himself requested that the compensation be determined under the 1894 Act, he cannot now turn around and claim that the Award has been passed in violation of the 2013

Act.

Heard Ld. Counsel for the parties.

Section 24 of the 2013 Act is reproduced below:-

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

As per Section 24(1)(a) of the 2013 Act, where proceedings for land acquisition had been initiated under the 1894 Act, but no award under Section 11 thereof has been made, then all provisions of the 2013 Act relating to determination of compensation shall apply. The clear mandate of the 2013 Act is that in case proceedings for land acquisition initiated under the 1894 Act have not culminated into passing of an award under Section 11 thereof before coming into force of 2013 Act, then all provisions of 2013 Act relating to determination of compensation shall apply.

The fact that after coming into force of the 2013 Act, the compensation had to be determined in terms thereof has been noticed even in the impugned award, however, Ld. Land Acquisition Collector proceeded to assess the compensation at the rates already fixed by the Commissioner, Hisar Division, Hisar on the applications and the affidavits submitted by some of the share-holders that compensation may be announced at those rates. This was because the shareholders said that they were in keen need of water and felt that the exercise to determine compensation under the 2013 Act may take time as against the compensation under the 1894 Act, which had already been fixed by the Commissioner, Hisar Division, Hisar.

We are of the view that in the face of the clear statutory provision that where an award under Section 11 of the 1894 Act has not been announced before coming into force of 2013 Act, the compensation has to be determined in terms of the 2013 Act, affidavits or applications filed by some of the shareholders including the petitioner that they be awarded compensation at the rates fixed under the 1894 Act, would not

absolve the authorities to comply with the mandate of the Statute and determine compensation as per the 2013 Act.

Accordingly, both the petitions are allowed. The impugned award dated 31.07.2014 is quashed. The respondents are directed to determine the compensation payable to the petitioners as per the provisions of the 2013 Act. The amount of compensation already paid to the petitioners in terms of award already announced, shall be adjusted against the amount which may be awarded under the 2013 Act.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 23, 2017

gian

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No