IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16837 of 2017
Date of decision: 06.12.2017

Avtar Singh and others

… Petitioners

Versus

Union of India and others

… Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Raj Kaushik, Advocate for the petitioners.
Mr. Puneet Jindal, Senior Advocate with
Mr. Amandeep Singh Meho, Advocate for the respondents.
…

ARUN PALLI, J. (Oral)

This is a petition under Articles 226 & 227 of the Constitution of India, praying for a writ in the nature of mandamus, directing respondent No.1 to award 100% solatium and interest to the petitioners, owing to the acquisition of their land holdings, in terms of the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, '2013 Act').

Vide notification dated 20.09.2007, issued under Section 4 of the Land Acquisition Act, 1894 (for short, '1894 Act'), an area, measuring 140 acres 5 kanals and 6 marlas, situated in different villages, in Tehsil Samrala, District Ludhiana, was sought to be acquired for execution, maintenance, management and operation of Chandigarh-Ludhiana New B.G. Rail Line. Vide award dated 20.03.2009, the Land Acquisition Collector assessed the acquired land @ ₹ 25,00,000/- per acre. The claimant-landowners were also awarded solatium @ 30% as also the Non Litigation Premium. The limited grievance that the petitioners have is; that they were disbursed the compensation, in terms of the award of the Collector, only in the year 2012, which they accepted without prejudice to their rights to seek further enhancement. Thus, in reference to the provisions of Section 30 of 2013 Act, the petitioners claim solatium @ 100%. Further a reference is also made in the petition to the decision of the Division Bench of this Court in **M/s Golden Iron and Steel Forgings** v. **Union of India and others**, 2011(4) RCR (Civil) 375 and the order of the Supreme Court in the case of **Sunita Mehra and another** v. **Union of India and others**, 2016(8) Scale 582.

Concededly, the petitioners were disbursed the entire compensation as also all the statutory benefits admissible in law, including solatium @ 30%, in the month of May- June 2009, vide different cheques. Payment slips acknowledging receipt of the amount are appended with the written statement as Annexure R6. Not just that, for the petitioners chose not to question the award rendered by the Collector any further, and received the amount of compensation without any protest, they were also awarded 15% Non Litigation Premium. Which is why, 14 of the 24 petitioners even furnished their specific affidavits in this regard. The respondents were handed over possession of the acquired land by the petitioners on 20.05.2009, the position that is fortified by the possession certificate appended as Annexure R5. Thus, the entire acquisition proceedings stood finalized in the year 2009 itself. Hence, the averments set out in para 5 of the paper book "***that accordingly the amount of compensation has been given to the petitioners in the year 2012 and the same was accepted by the***

petitioners without prejudice to the rights of the petitioners to seek enhancement. The petitioners also reserves their right to seek enhancement in accordance with the settled proposition of law and including on the basis that higher compensation to other lands which were adjacent to the petitioners and similarly situated lands had been given and the petitioners are also entitled to the same. *"* are factually incorrect and false.

Concededly, the Act of 2013 came into being w.e.f. 01.01.2014, and in the wake of the decision sketched out above, one wonders as to how it would have any bearing on the matter in issue. On being pointedly asked, even the learned counsel for the petitioners fails to explain anything in this regard. Under section 24, the limited application that the Act of 2013 has upon the proceedings under the 1894 Act; that all those cases where the proceedings were initiated under 1894 Act but no award is rendered, the provisions of Section 2013 Act shall apply and the compensation shall be determined in terms thereof. Or where the award made by the Collector under Section 11 of the 1894 Act was made five years or more prior to the commencement of 2013 Act but the physical possession of the land was not obtained or the compensation therefor was not paid, in that event the proceedings under the 1894 Act shall be deemed to have been lapsed. But, as indicated earlier, such is not the position in the present case, for the acquisition proceedings under the 1894 Act stood concluded in the year 2009 itself.

Likewise, the decision of this Court in M/s Golden Iron and Steel Forgings's case (supra) as also the order of the Supreme Court in Sunita Mehra's case (supra) do not advance the case of the petitioners a bit.

In the case of M/s Golden Iron and Steel Forgings, the Division Bench of this Court had declared Sections 3J and 3G of the National Highways Act, 1956 (for short, '1956 Act') to be ultra vires of the Constitution, for those provisions denied payment of solatium and interest to the landowners under the said Act. Accordingly, it was held that in all acquisitions under the 1956 Act, the claimant-landowners shall necessarily have to be awarded solatium and interest, in terms of the provisions of Sections 23(2) and 28 of the 1894 Act. Whereas, the Supreme Court in the case of Sunita Mehra (supra) had clarified that claimant-landowners shall be entitled to solatium and interest on solatium, in terms of M/s Golden Iron and Steel Forgings (supra), from the date of the decision of the said case i.e. 28.03.2008. Ex facie, the decision of the Supreme Court shall apply to those cases; (a) where the acquisition proceedings were initiated not under the 1894 Act, but under a separate enactment; (b) the claimant-landowners were not awarded any interest and solatium by the Land Acquisition Collector/Competent Authority; (c) the award was rendered by the LAC or the Competent Authority after 28.03.2008.

An analysis of the position, as sketched out above, irresistibly show that the petition at hand lacks both i.e. the merits as also the bonafides. The petitioners are also guilty of conscious and calculated concealment of material facts, for it was never disclosed in the petition that they had already received the compensation as also all the statutory benefits in the year 2009 itself. Further, they had even been paid non-litigation premium @ 15% and the specific affidavits had already been furnished by them in this regard. Thus, the petition is merely speculative in nature and seriously lacks bonafides.

Accordingly, the petition is dismissed with a cost of ₹ 20,000/- to be deposited in the Punjab and Haryana High Court Bar Association Benevolent Fund.

(Arun Palli)
Judge

06.12.2017
Rajan

Whether speaking / reasoned: YES
Whether Reportable: NO