

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

CWP No.26233 of 2013 (O&M)

Date of Decision: July 17, 2017

Smt. Lajwanti and others

----Petitioners

Versus

State of Haryana and others

----Respondents

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

**Present: Mr. Harkesh Manuja, Advocate
for the petitioners.**

Mr. Ankur Mittal, Addl. AG, Haryana.

HARINDER SINGH SIDHU, J.

1. This petition has been filed praying for directions to quash the notifications dated 16.12.1988 (Annexure P-2) and 13.12.1989 (Annexure P-3) issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short "Act") as also the award dated 20.12.2012 (Annexure P-5) qua the share of the land of the petitioners.

2. The petitioners are the residents of revenue estate of Garhi Brahman, Tehsil and District Sonapat. They along with their co-sharers owned 107 Kanals 02 Marlas of land as fully detailed in paragraph 2 of the petition. The land of the petitioners was sought to be acquired by the State of Haryana for development and utilization as residential and commercial Sector 23, Sonapat. Notification under Section 4 of the Act was issued on 16.12.1988. The petitioners filed objections under Section 5-A of the Act.

Notification under Section 6 of the Act was issued on 13.12.1989. The

petitioners along with other co-sharers filed CWP No.3892 of 1990 'Bhana Ram and ors Vs. State of Haryana and ors.' challenging the notifications under Sections 4 and 6 of the Act. Vide interim order dated 26.03.1990, passed in that writ petition, dispossession of the petitioners was stayed. It is averred that while filing that petition, inadvertently, land measuring 24 kanals, 5 marlas comprised in Khewat No.258/58 Min, Khatoni No.310 Rect. No.50, Killa Nos.21, 22, 23 and 27 was not mentioned, consequently there was no stay qua this land. The Land Acquisition Collector announced the award on 28.03.1990 regarding these 24 kanals 05 marlas land which did not find mention in the writ petition. A copy of this award has been placed on record as Annexure P-8. However, later C.M. No.5753 of 1993 was filed to amend the writ petition to include the aforementioned land measuring 24 kanals 5 marlas. The application was allowed and stay of dispossession was granted qua this piece of land as well. CWP No.3892 of 1990 was finally dismissed vide judgment and order dated 22.03.2011. Thereafter, the Land Acquisition Collector announced award No.10 dated 20.12.2012 (Annexure P-5) regarding the remaining land of the petitioners for which award had not been announced because of the stay order dated 26.03.1990. The total amount in this award is ₹ 18,41,703/- (Rupees Eighteen lacs forty one thousand seven hundred three only).

3. The only argument raised by the learned counsel for the petitioners is that the award has been passed without obtaining permission of the Government as required in terms of the Ist proviso to Section 11 of the Act.

4. Learned counsel for the respondents-State states that an order

dated 14.05.1986 (Annexure R-1) has been issued by the State of Haryana, whereby, approval of the Government for acquisition of the Urban Estate Department is to be obtained only, where the amount of compensation is more than ₹ 2 crores. As the compensation awarded by way of the impugned award is only ₹ 18,41,703/-, so no approval of the Government was required and consequently there is no infirmity in the award on this ground. Learned State counsel on instructions further states that the limit in regard to acquisition of the Urban Estates Department has been revised from ₹ 2 crores to ₹ 10 crores w.e.f. 24.11.2014.

5. Learned counsel for the petitioners argued that as per the notification Annexure R-1, the limit of ₹ 2 crores is for the entire acquisition. In this case, earlier an award dated 28.03.1990 of ₹ 5,60,60,491.20 (Five crores, sixty lacs, sixty thousand four hundred ninety one and twenty paise only) was announced in respect of land qua which there was no order for stay of dispossession. Thus, the subsequent award dated 20.12.2012 announced after the dismissal of the writ petition has to be treated as supplementary award. The total of both, which pertain to one and single acquisition amounts to more than ₹ 2 crore. Hence approval of Government was required.

6. We have heard learned counsel for the parties and perused the record.

Section 11 of the Land Acquisition Act is reproduced as under:-

“11. Enquiry and award by Collector.- (1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated

pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of

- (i) the true area of the land;*
- (ii) the compensation which in his opinion should be allowed for the land; and*
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:*

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf: Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) *Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.*

(3) *The determination of compensation for any land under sub-section (2) shall not, in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.*

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.”

As per the first proviso to Section 11(1), no award shall be made by the Collector without the previous approval of the appropriate Government or of an officer authorised by the Government. However, as per the second proviso, the appropriate Government may direct that the Collector may make an award without such approval in such class of cases as the Government may specify in this behalf. The proviso has been construed to be mandatory by the Courts.

7. The relevant extract of the order of the State Government dated 14.5.1986 is as under:-

“In compliance of sub section-1 of section-11 in clause-II of the Land Acquisition Act, 1894 and in supersession of the Haryana Government, Revenue Department order issued vide No.7609-R-03-04/34401 dated 19,December 1984 the Governor of Haryana hereby direct that while acquiring land in the Haryana State the Land Acquisition Collectors announcing award and payment of compensation should adhered to the following principle and directions.

1. The land acquisition Collectors shall have to obtain prior approval of the Government in the cases of Land Acquisition cost intimated by the Collector should not be 15% more and the total amount of such difference should not be more than 5 lacs.

2. In all matters of Public Works Departments (Building & Roads, Public Health and Irrigation), where single acquisition is more than Rs. 1 crore, approval of the Government in administrative Department will be obtained. However, in case of Urban Estates Department this limit

will be Rs.2 crores.

xxx

xxx

xxx”

8. As per this order, in acquisitions by Public Works Departments (Building & Roads, Public Health and Irrigation), where single acquisition is more than ₹ 1 crore, approval of the Government in administrative Department would be required to be obtained. For acquisitions by the Urban Estates Department this limit will be ₹ 2 crores.

9. There may be merit in the arguments of the Ld. Counsel for the petitioners that the limit of ₹ 2 crore in the Government order dated 14th May, 1986 having been specified for a single acquisition, if (for whatever reason), multiple awards are announced qua one acquisition, prior approval of the government would not be required, only if, the aggregate of such awards does not exceed ₹ 2 crore. But in the fact situation of this case, though both the award dated 28.3.1990 and the impugned award dated 20.12.2012 are in respect of lands acquired through the same notifications, that argument may not suffice to invalidate the impugned award. Firstly, the two awards are separated by a gap of over twenty two years. It has been stated in the written statement that the possession of the land, subject matter of the impugned award dated 20.12.2012, was handed over to Estate Officer Haryana Urban Development Authority on the day of the award and that the possession of the entire land is with HUDA. Thus, the entire land subject matter of the acquisition, stands vested in the State Government. The land which was the subject matter of the earlier award stood vested in the Government almost twenty two years before the announcement of the impugned award on 20.12.2012 . The amount awarded in the earlier award

is ₹ 5,60,60,491.20, whereas the total award amount in the impugned award

is ₹ 18,41,703/- only, which is a fraction of the earlier award. There is no challenge to the earlier award that it was announced without the prior approval of the government. It is only after adding both the award amounts that the limit of ₹ 2 crore specified in the letter dated 14th May, 1986 would be exceeded. The challenge to the impugned award by adding the award amount of the earlier award would amount to a challenge to the earlier award as well. Such a recourse, directly or indirectly, cannot be permitted at this point in time, after a lapse of almost 27 years. Independent of the earlier award dated 28.3.1990, the present award is well below the limit of ₹ 2 crores specified in the government letter dated 14.5.1986 and cannot be invalidated on the ground of lack of prior approval of the Government.

10. Thus, we find no merit in the petition and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 17, 2017
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Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No