

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

**FAO No.6522 of 2016 (O&M)
Date of Decision : 15.02.2017.**

Mangal Dass

.....Appellant

Versus

**Govt. of India through Secretary, Ministry of Road Transport and
Surface/Highways and others**

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. Sherry K. Singla, Advocate for the appellant.

Mr. D.K.Singal, Advocate for respondents No.1 and 2.

ARUN PALLI, J. (Oral)

CM No.22236-CII of 2016

Allowed as prayed for.

CM No.22237-CII of 2016

This is an application seeking condonation of delay of 1697 days in filing the accompanying appeal.

Notice in this application was issued to the respondents and reply thereto has been filed.

Learned counsel for the applicant/appellant submits that pursuant to the impugned judgment, dated 28.11.2011, District Judge, Jalandhar had remitted the matter to the Arbitrator for re-decision. The specific direction was issued to the Arbitrator to decide the dispute as

expeditious as possible and preferably within a period of four months. However, the Arbitrator is yet to re-initiate the proceedings. Whereas, he submits that in the appeals arising out of the same acquisition this Court had awarded enhancement to the co-landowners, vide order and judgment, dated 30.03.2016, rendered in FAO No.9678 of 2014 (Union of India and another Vs. Tehal Singh and others).

As opposed to this, learned counsel for the respondents submits that there is a gross and inordinate delay in filing the appeal and, therefore, even if the applicant is found entitled to the compensation in terms of the decision in the case of Tehal Singh (supra), he be deprived of interest for the period of delay in filing the appeal.

I have heard learned counsel counsel for the parties and perused the records.

Concededly, the arbitral award dated 12.04.2010 was set aside, vide impugned judgment dated 28.11.2011. More than 5 years have gone by, and the Arbitrator is yet to proceed with the matter. On the other hand, the landowners, who were/are equally situated and circumstanced as the applicant has even been awarded enhancement by this Court in the case of Tehal Singh and others (supra). So much so, the requisite compensation in terms of the said decision has also been released by the respondents to the landowners. In fact, the order rendered by this Court in the case of Tehal Singh and others (supra) has not even been questioned any further by the respondents. Therefore, the short question that beseech an answer is; the delay that had occurred in filing the accompanying appeal is attributable to

the applicant/appellant? The answer is no. In fact, having waited for determination of his claim for over 5 years the applicant was choice-less, and rather constrained to approach this Court, for, the co-landowners were even disbursed the enhancement awarded by this Court.

Rather, the appellant is a victim of non-determination of his claim by the Arbitrator. Particularly, when he is not a litigant by choice but owing to compulsory acquisition of his holding.

Accordingly, the application is allowed and the delay in filing the appeal is condoned.

C.M. stands disposed of.

FAO No.6522 of 2016 (O&M)

The claimant-landowner is in appeal against the judgment dated 28.11.2011, rendered by the District Judge, Jalandhar, vide which the objections filed by the respondents under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') were accepted, and the arbitral award, dated 12.04.2010, was set aside, and the matter was remitted for, re-decision to the Arbitrator.

The facts that are required to be noticed are limited.

Vide notification under Section 3-A of the National Highway Act, 1956, published on 24.12.2004, a large tract of land, situated at village Daulatpur, Tehsil Pathankot, District Gurdaspur, including a land measuring 1 marla owned by the appellant, was sought to be acquired for development and widening of Jalandhar-Pathankot Section National Highway No.1-A, KM 26.00 to 117.750 KM, and Pathankot to Jammu Section, KM 4.000 to

16.350 in the State of Punjab. A final declaration in terms of Section 3-D was published on 11.07.2005. The competent authority-cum-Land Acquisition Collector assessed the market value of the acquired land at ₹72,00,000/- per acre i.e. ₹37,190/- per marla. Since the appellant happened to be a co-sharer to the extent to 1/4th share in a land measuring 4 marlas only he was awarded ₹37,190/- in lieu of his holding. And ₹1,98,607/- for the superstructure, that is, a double storied building consisting of a shop each on the ground and the first floor.

Being aggrieved of the assessment as also the compensation awarded by the competent authority the claimant invoked the provisions of Section 3G(5) of the Act, and the dispute was referred to the Arbitrator, appointed by the Central Government.

On consideration of the matter, the Arbitrator enhanced the compensation qua the acquired land to ₹2.50 lacs per marla i.e. ₹4 crore per acre. Enhancement at ₹500/- per square feet was awarded for the superstructure. Additionally, a sum of ₹1 lac was granted for the loss of business.

The respondents assailed the arbitral award, for, it filed objections under Section 34 of the Act before the District Judge, Jalandhar. And, vide impugned judgment dated 28.11.2011, learned District Judge set aside the award, for, it was found to be against the public policy of India i.e. against the statutory provisions of 1956 Act, as also without any evidence. Accordingly, the matter was remitted to the Arbitrator for re-decision after affording opportunities to the parties to lead their respective evidence. That

is how, as indicated above, the claimant-landowner is before this Court.

All what has been urged by learned counsel for the appellant is that the matter in issue is squarely covered by the order and judgment dated 30.03.2016, rendered by this Court, in FAO No.9678 of 2014 (Union of India and another Vs. Tehal Singh and others), vide which, in the appeals arising out of the same acquisition a Co-ordinate Bench of this Court had affirmed the assessment made by the Arbitrator as regards the value of the acquired land at ₹4.5 lacs per marla. He submits that even the other co-landowners, whose land also formed part of the revenue estate of village Daulatpur have since been awarded compensation in terms of the decision of this Court dated 30.03.2016. Thus, he asserts that the appellant too is entitled to the same compensation.

The factual position as set out above is not disputed by learned counsel for the respondents.

However, he submits that the appellant shall still not be entitled to the same compensation as awarded by this Court in the case of Tehal Singh and others (supra), for, he never filed objections against the arbitral award to claim further enhancement. He asserts that only the respondents had assailed the arbitral award, vide objections under Section 34 of the Act, which were accepted, and since the present appeal arises out of the objections filed by the respondents, the appellant cannot claim any enhancement in this appeal.

I have heard learned counsel for the parties and perused the records.

Concededly, the arbitral award, dated 12.04.2010, was set aside by the District Judge, vide impugned judgment dated 28.11.2011, and the matter was remitted to the Arbitrator for re-decision. Meaning thereby, the said award is non-existent. Undoubtedly, against the arbitral award, dated 12.04.2010, the appellant had not filed any objections to claim enhancement, but that would hardly be of any consequence, for, the arbitral award has since been set aside. To be precise, in terms of the judgment rendered by the District Judge, the dispute is required to be re-decided by the Arbitrator, after affording opportunities to the parties to lead their respective evidence. *Ex facie*, the Arbitrator was directed to decide the dispute as expeditious as possible and preferably within four months. However, a period of 5 years have gone by. Concededly, the Arbitrator is yet to re-initiate the proceedings whereas the co-landowners, whose land was also acquired pursuant to the same acquisition, have since been awarded enhancement in terms of the order of this Court in the case of Tehal Singh and others (*supra*). Not just that, the respondents have even released the requisite compensation to the claimants/landowners in those proceedings. Faced with this dichotomy the appellant was constrained to approach this Court. The matter in issue can also be analyzed from yet another standpoint; even if, the impugned judgment is sustained still the Arbitrator shall have to re-decide the dispute. And this is not the case of the respondents either that despite the decision of this Court in the case of Tehal Singh and others (*supra*) the Arbitrator shall not be obliged to re-determine the compensation in terms of the decision of this Court. Therefore, the short

issue that arises for consideration is; whether the claim of the appellant be decided in these proceedings or he be still left to litigate for an uncertain period? Particularly, when the claimant-landowner is not a litigant by choice but owing to the compulsory acquisition of his holding. And, despite the directions issued by the District Judge, over five years have gone by and the matter is yet to proceed. Even otherwise, once the learned District Judge had set aside the arbitral award, he could not have remanded the matter to the Arbitrator for re-decision. Therefore, the impugned judgment cannot be sustained either. Concededly, vide order and judgment dated 30.03.2016, a Co-ordinate Bench of this Court in the case of Tehal Singh and others (supra) had affirmed the assessment of the acquired land at ₹4,50,000/- per marla;

I am of the view that the amount of compensation assessed by the Arbitrator @ ₹ 4,50,000/- per marla is fair, reasonable and justified and the enhancement of the amount of compensation ₹7,00,000/- per marla by taking into consideration the collector rate of the year 2011 is not justified and thus, the amount of compensation is reduced from ₹7,00,000/- to ₹4,50,000/- whereas the Award of the Arbitrator is upheld viz-a-viz the compensation determined @ ₹4,50,000/- per marla. I do not intend to differ with the assessment viz-a-viz the boundary wall, severance charges etc. However, the landowners will only be entitled for the statutory benefits as per the Sections

23(2) and 28 of the 1984 Act and in view of the judgment rendered by the Division Bench of this Court in “M/s Golden Iron and Steel Forging V/s Union of India and others” 2011 (4) RCR (Civil) 375.

As indicated earlier, the order and judgment referred to above was not assailed any further, and has thus, attained finality. The claimants-landowners in those proceedings have even been disbursed compensation by the respondents. It does not and there as in the subsequent appeals filed by the other landowners, in FAO Nos. 6404, 6479, 6498, 6499, 7581, 7437 and 7433 of 2016, this Court had also disposed of their claims in terms of its earlier decision in the case of Tehal Singh and others (supra). I am informed by the learned counsel for the parties that most of the landowners even in the subsequent matters have also been released compensation.

Once that is so, learned counsel for the respondents could not assign any reason as to how and why the appellant shall not be entitled to the same compensation.

Albeit, the argument advanced by the learned counsel for the respondents that the enhancement awarded by the Arbitrator as regards superstructure and compensation for loss of business is devoid of any evidence has merit, but the said issue does not survive any more. For, the arbitral award itself had been set aside by the District Judge. And, in the present proceedings neither the learned counsel for the appellant has pressed for enhancement in compensation as regards superstructure, over and above

what has been awarded by the competent authority, nor for any compensation for loss of business.

In conspectus of the position as sketched out above, the only and the inevitable conclusion that could be reached is; that the claimant-landowner is also entitled to the same compensation as has been awarded to the co-landowners by this Court vide order and judgment dated 30.03.2016. Accordingly, the impugned judgment dated 28.11.2011, is set aside and appeal is disposed of in terms of the decision of this Court in the case of Tehal Singh (supra).

15.02.2017

*Manoj Bhutani***(ARUN PALLI)**
JUDGE

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No