

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 6898-2016 (O&M)
Date of decision: 08.03.2018

M/s Shri Laxmi Narayan Buildtech Pvt. Ltd.

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Sanjiv Gupta and Mr.Kshtish Sharma, Advocate
for the petitioner
Mr.Manoj Kumar Sangwan, DAG Haryana
for respondent no.1
Mr.Vijay Lath and Mr.Naveen Sharma,
Advocates for the respondent nos.31 to 34
Mr.Shailendra Jain, Senior Advocate with
Mr.Harman Jivtesh Singh, Advocate for respondent
nos.4, 5, 7, 10 & 17
Mr.Anurag Jain and Mr.Amandeep Kaur Rathor,
Advocates for respondent nos.4, 7, 8, 15, 18, 24 to 27, 29, 35
36, 37, 41, 42, 43, 44, 47, 52 and 53

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

Petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India against order dated 7.9.2016 (Annexure P-10) passed by the learned Land Acquisition Collector (District Revenue Officer), Urban Estates Department, Haryana, vide which, application filed by the petitioner under Section 30 of the Land Acquisition Act, 1894 (for short, 'the Act') has been rejected.

It is stated that award no.1 dated 3.8.2007 was announced regarding acquisition of land measuring 229.13 acres of Sectors 3, 5, 6

Hansi. Notification under Section 4 of the Act was issued on 29.8.2005.

Declaration under Section 6 of the Act was issued on 28.8.2006. Awarded rate of land was Rs.12 lakh per acre upto two acres from GT Road Hisar to Delhi of all category, Rs.10 lakh per acre upto two acres Jind Bypass Road and Rs.8 lakh per acre for all other kinds of land was passed. Petitioner claimed the land of measuring 225 kanals 5 marlas (approximately 28 acres) comprised in khewat no.176, 177, 204, 319, 320, 912, 3107 of village Hansi.

It is stated that the land owners after issuance of notifications under Sections 4 and 6 of the Act, agreed with the petitioner that the petitioner shall be entitled to all the compensation awarded by the competent authority regarding the said land and the sellers undertook that they will have no objection if the compensation is received by the buyers (petitioner). Since, land was under the acquisition proceedings, therefore, the owners also executed general power of attorney No.74, 75, 76 and 77 dated 28.5.2007 in favour of Raj Kumar son of Shri Manohar Lal, resident of ADC Colony, Barnala Road, Sirsa for filing application before the State Government and Director, Town & Country Planning, Haryana for release of the said land from acquisition and to obtain licence for development of a residential colony on the said land. Earlier, on 24.5.2007, land owners had also entered into a collaboration agreement with the petitioner for getting the land released from the acquisition and to develop it as a residential colony after obtaining licence from Director, Town & Country Planning, Haryana. Thereafter, the said owners applied for release of the land from the acquisition and grant of licence for development of residential colony to Director, Town & Country Planning, Haryana. But the said application was rejected. The petitioner became entitled to receive the entire compensation

announced vide award No.1 dated 3.8.2007 as well as enhanced compensation. Owners received compensation and paid the same to the petitioner. Petitioner claimed that they are entitled to received the enhanced compensation of the said land. The Learned Additional District Judge, Hisar vide judgment dated 31.5.2014 titled as Lajwanti and others vs. State of Haryana has enhanced the compensation of surrounding land. Application of Raj Kumar under Section 18 for enhancement of compensation is pending before Court. Now, the owners have become dishonest and they want to receive the enhanced compensation themselves. It was claimed that bonafide dispute has arisen between the petitioner and the respondents regarding enhanced compensation. Therefore, the matter is required to be referred under Section 30 of the Act to District Judge, Hisar. The application under Section 30 of the Act is within limitation from 31.5.2014.

Land Acquisition Collector, after hearing the opposite party/ owners came to the conclusion that there is no specific order of any competent authority regarding ownership or possession. The petitioner might be having agreement and GPA but the Land Acquisition Collector is not competent to take cognizance of the same. It was further added that it is for the Land Acquisition Collector to decide whether reference is barred by time or not. It was observed that though the said order is revisable order, it further held that the agreement does not confer any title or purchaser is not entitled to compensation. It was further observed that the petitioner is not recorded owner. Reference is also barred under Section 18 of the Act. Consequently, the application was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the file.

Admittedly, in this case, notification under Section 4 of the Act was issued on 29.8.2005 and declaration under Section 6 of the Act was issued on 28.8.2006. Petitioner claimed agreement dated 28.5.2007 to receive the entire compensation and collaboration agreement dated 24.5.2007. Both the agreements are after the issuance of declaration under Section 6 of the Act. In the fully paid agreement dated 28.5.2007, there was a clause 6 which is as follows:-

6. That the Buyer shall be entitled to all such compensation, so awarded by competent authority in respect of the said land and that the Seller undertakes that it shall have no objection to such compensation to be received by the Buyer from such concerned authorities.

There was also arbitration clause 10 between the parties:-

10. If any dispute or difference arises out of this present instrument and/ or the transaction thereto, the same shall be referred to the sole adjudication of Mr.Ramanand Yadav s/o Shri Amay Singh r/o Village Dhani Piran Tehsil Hansi District Hissar, Haryana in accordance with the Arbitration and Conciliation Act, 1996 and the arbitral award so pronounced shall be final and binding on both the parties. The place of Arbitration shall be at Hansi.

According to the petitioner, the entire consideration was paid. It is further claimed that as per collaboration agreement dated 24.5.2007, while noticing that the land acquisition proceedings are pending and the owners being interested in development of the said land as a residential colony, the agreement was entered vide which, the petitioner was authorized

to obtain licence of permission for development of residential colony. The owners agreed to hand over the possession of the land to the developers at the time of execution. In the said agreement, there was an arbitration clause at serial no.20.

Learned counsel for the petitioner has argued that petitioner having acquired interest in the said land and being interested person is entitled to move application under Section 30 of the Act and regarding enhanced compensation also. It is not disputed that initially, the compensation fixed by the Collector was collected by the owners and paid to the present petitioner in terms of the agreement between them. Section 30 of the Act provides as under:-

30. Dispute as to apportionment. - When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

The dispute in the present case is regarding enhanced compensation, regarding which the dispute is pending before the Court. Petitioner claimed that in view of the agreement, he is entitled to the enhanced compensation.

Learned counsel for the respondents has argued that compensation is to be paid to the owners, who are so recorded in the revenue record. Learned counsel for respondents has further argued that the agreement to sell does not confer any title even if the purchaser is claimed to be in possession of the land. Therefore, the purchaser, on the basis of the

agreement to sell, is not entitled to compensation, in case agreement is made subsequent to the notification under Section 4 of the Act. Reliance has been placed on the authority in Sunil Kumar Jain vs. Kishan and others, 1995 AIR (SC) 1891. Learned counsel for respondents has further referred to the authority in S.Kesari Hanuman Goud vs. Anjum Jehan and others, 2014 (2) RCR (Civil) 52 to press that the compensation of Land Acquisition Act is to be paid to the owners and the agreement holder has no right to receive the compensation. Further reliance is placed on authority of Karnataka High Court in Kemipoji Rao vs. Special Land Acquisition and Estate Officer, National Highways, 2008 AIR (Karnataka) 54, wherein it was observed as under:-

10. Even for argument sake, if it is to be assumed that there is no limitation prescribed under Section 30 of the Land Acquisition Act, it is obvious that from the very scheme of the Act itself, an application can be made only when the matter is pending before the Land Acquisition Officer and at any rate before the distribution of compensation as awarded and not fifteen years after the Award amount has been distributed. It is not as though such proceedings should be kept on the file of the Special Land Acquisition Officer forever. Such applications are relevant only so long as the proceedings are current before the Land Acquisition Officer and not thereafter. Such matters cannot be revived by an application before the reference Court whether under Section 18(3) or under Sections 30 and 31 of the Act, as the application to the reference Court is also one which should be during the pendency of the proceedings before the

Land Acquisition Officer and not long after the proceedings have become final.

Therefore, it has been argued that on the basis of mere fully paid agreement to sell, which was entered after the issuance of notifications under Sections 4 and 6 of the Act, petitioner does not have any right to receive compensation.

On the other hand, learned counsel for the petitioner has argued that it was a fully paid agreement. In terms of the agreement, owners, after receiving the compensation, paid the same to the petitioner. Therefore, the present petitioner did not raise any objection at that time. It is further contended that application to release the land from acquisition as well as application for grant of licence to develop the residential colony has been rejected. Therefore, residential colony cannot be developed on the said land. It is contended that the entire sale consideration was paid and the possession was also delivered to the petitioner and that undisputedly, he has received the compensation initially granted by the Collector, though, through the owners. Therefore, the petitioner is also entitled to the enhanced compensation, dispute regarding which is pending in the Court. It is contended that the petitioner is person interested and while deciding the reference under Section 28-A of the Act, the Court of District Judge should also decide his claim of apportionment under Section 30 of the Act.

Learned counsel for the petitioner has further argued that by making reference under Section 30 of the Act, the Collector is in fact not deciding on the legality or validity of claim of the petitioner, which is to be decided by the Court. Regarding the scope and nature of powers of the Collector, learned counsel for the petitioner has referred to the following

observations of the Apex Court in Sharda Devi vs. State of Bihar and another, (2003) 3 Supreme Court Cases 128:-

Under Section 18 of the Act the Collector does not have power to withhold the reference. Once a written application has been made satisfying the requirements of Section 18, the Collector shall make a reference. The Collector has no discretion in the matter; whether the dispute has any merit or not is to be left for the determination of the Court. Under Section 30 the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the attention of the Court, and so on are such illustrative factors which may enter into the consideration of the Collector while exercising the discretion. If the Collector makes the reference it may be decided by the Court subject to its forming an opinion that the dispute was capable of reference and determination under Section 30 of the Act. In case the Collector refuses to make a reference under Section 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit.

Learned counsel for the petitioner has further argued that in case of fully paid agreement entered after the notifications under Sections 4 and 6 of the Act, the right of the petitioner to receive the compensation or enhanced compensation can be gone under Section 30 of the Act. Reliance

has been placed on the authority of the Apex Court in Govt. of NCT of Delhi vs. Manav Dharam Trust and another, 2017(2) RCR (Civil) 1062, wherein the Court was dealing with the following question:-

Whether the subsequent purchasers/assignees/power of attorney holders, etc., have locus standi to file a petition for a declaration of lapse of acquisition proceedings under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the 2013 Act”), is the only issue arising for consideration in these cases.

It was ultimately concluded by the Apex Court as under:-

29. *Thus, the subsequent purchaser, the assignee, the successor in interest, the power of attorney, etc., are all persons who are interested in compensation/land owners/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondents/writ petitioners do not have any locus standi.*

Therefore, it has been argued that even the assignee, power of attorney holder etc. have right to intervene in the land acquisition proceedings.

I am of the view that once the petitioner claims that under

agreement between the parties, he is entitled to receive the compensation along with the enhanced compensation, the matter is required to be determined by the Court in a reference under Section 30 of the Act. Land Acquisition Collector cannot decline to send the reference on the ground that such claim is not maintainable. It hardly matters whether the petitioner succeeds in his claim in the Court or not.

It being so, the impugned order dated 7.9.2016 (Annexure P-10) passed by the learned Land Acquisition Collector (District Revenue Officer), Urban Estates Department, Haryana, is set aside and the Land Acquisition Collector is directed to send reference under Section 30 of the Act to the District Judge immediately for decision in accordance with law.

Petition accordingly stands allowed.

08.03.2018

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No