IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-11853-CWP-2018 in/and
CWP No.14100 of 2012
Decided on : 19.12.2018

Rajiv Singh Bawa

... Applicant/Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Vishal Sodhi, Advocate for the applicant/petitioner.

Ms. Simran Grewal, AAG, Punjab

G.S. Sandhawalia, J. (Oral)

CM-11853-CWP-2018

The present application has been filed for disposal of the present writ petition, in view of the order passed in CWP No.23021 of 2011 on 25.07.2018 (Annexure P-7).

Notice of the application was issued on 04.10.2018 to the respondents, but not reply has come forth.

Accordingly, in view of the averments made in the application, duly supported by affidavit, the same is allowed. The main case is taken on board today itself.

CM stands disposed of.

Main case

The challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the order dated 01.03.2012 (Annexure P-3), whereby the respondent No.2, in a petition filed under Section 28-A of the Land Acquisition Act, 1894 (for short 'the Act') came to the conclusion that he was not to proceed further, in view of the pendency of RFA Nos.4163 & 4164 of 2006 before this Court. Accordingly, liberty was given to move a fresh application after the decision of the appeals by this Court or by Apex Court.

In similar circumstances in CWP No.23021 of 2011 and other connected petitions decided on 25.07.2018 (Annexure P-7), an similar order dated 16.09.2011 has been quashed by holding as under:-

> *"Counsel for the petitioners has primarily argued that firstly, the order itself is not tenable on account of the fact that respondent No.2 should have kept the applications pending till the final decision and should not have disposed of the same as the valuable interest of the parties were involved. Counsel has also placed reliance upon the judgment of the Apex Court in* ***U.P. State Industrial Development Corpn. Ltd. Vs. State of U.P. & others 1995 (2) SCC 766****, wherein it has been held that the Collector should keep the applications filed under Section 28-A(1) pending till the disposal of the appeals and on receipt of the judgment of the High Court, the re-determination of the compensation has to be done. The said view has been followed recently in* ***Bharatsing & others Vs. State of Maharashtra & others 2018 (1) RCR (Civil) 497****. Relevant portion reads as under:*
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> > *"17. The Section 28A application dated 31.12.1992 based on the awards in LAR Nos. 123 and 129 of 1983 was decided on 25.10.2000 when the appeals therefrom were pending. The Collector ought to have kept the application pending till the appeals were decided on 23.03.2009. On principle, the High Court is correct and justified in the view taken in the impugned judgment that there cannot be successive applications under Section 28A in view of Pradeep Kumar (supra). But that is not the point arising for consideration here. No doubt, the second application dated 27.05.2009 for refixation in light of the appellate court judgment is not maintainable. However, since the Collector is also at fault in deciding the application when the matter was pending in appeal, we are*

of the view that in the peculiar facts of the instant case, the application dated 31.12.1992 should be considered afresh. Accordingly, the appeal is disposed of as follows. The Land Acquisition Collector is directed to consider afresh the Section 28A application dated 31.12.1992 and pass orders in the light of the judgment of the High Court dated 23.03.2009 in First Appeal Nos.569 and 570 of 1997 on the file of the High Court of Bombay, Bench at Aurangabad. For enabling the Collector to pass orders as above, the order dated 25.10.2000 is set aside. However, the amounts already paid are to be duly adjusted."

Resultantly, the said order dated 16.09.2011 (Annexure P-3), cannot be sustained and the same is, accordingly, quashed. However, in order to cut short the litigation and remand the matter, this Court is also of the opinion that since the Apex Court has already finalized the rate of compensation @ Rs.110/- per sq.yard, for the notification dated 29.06.1988, in CA-2041-2051-2016 titled Punjab Small Industries & Export Corporation Ltd. Vs. Dharamsala Pukhta Village Khak & others, decided on 21.11.2017 (Annexure P-6). The said order was again modified on 16.07.2018, by clarifying that it was only dealing with the acquisition for the notification dated 29.06.1988. by upholding the amount awarded by this Court in RFA-4241-2006 titled Vijay & another Vs. State of Punjab & others, decided on 27.02.2015 (Annexure P-5). Relevant portion of order dated 21.11.2017 reads as under:

"In our opinion, the decision had been taken by the High Court on the basis of premium of the lease, is appropriate in the facts of the case. The compensation that has been awarded by the High Court comes to a figure of Rs.110/- per square yard for the year 1988 which cannot be said either excessive or on a lower side. Appropriate cut has been applied. Thus, we are not inclined to interfere with the compensation determined for the acquisition made in the year 1988. The determination made by the High Court, for the

notification issued on 20.04.1988, is upheld. Coming to the notification issued in the year 1981, considering the facts and circumstances of the case, compensation at the same rate of Rs.110/- could not be said to be proper as that rate was prevailing in the year 1988 and value would be less before six years. Considering the peculiar facts and material on record, it would be appropriate to grant compensation at the rate of Rs.40/- per square yard instead of Rs.110/-, as said acquisition was made more than six years before in 1981. In view of the above, the appeals filed filed by the Punjab Small Industries and Export Corporation Ltd., in regard to Notification issued on 20th January, 1981, are allowed to the aforesaid extent and the appeals of land owners are dismissed. The appeals filed by the parties, pertaining to compensation with respect to Notification issued on 20th April, 1988, are also dismissed. The amount that has been deposited before the Registry of this Court shall be remitted to the Reference Court for disbursement, along with interest, if any, accrued thereupon. The balance amount, if any, shall be deposited within three months from today."

Resultantly, the present writ petitions are allowed and the landowners are, accordingly, held entitled to the benefit of market value of Rs.110/- per sq.yard, along with all statutory benefits."

Resultantly, keeping in view the above, this Court is of the opinion that the present case is covered by the above said case. Accordingly, the present writ petition is allowed by quashing the order dated 01.03.2012 (Annexure P-3). The landowners are held entitled to the benefit of market value @ ₹110/- per square yard alongwith all statutory benefits.

(G.S. SANDHAWALIA)
JUDGE

DECEMBER 19, 2018

Naveen *Whether speaking/reasoned: Yes/No*
Whether Reportable: Yes/No