

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

**CWP No.22455 of 2015
Date of Decision:09.01.2018**

Punjab Small Industries & Export Corporation Ltd. ...Petitioner

Versus

Collector Land Acquisition and another ...Respondents

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

Present: Mr. Abhilaksh Grover, Advocate
for the petitioner.

Ms. Akshita Chauhan, AAG, Punjab,
for respondent-State.

Mr. Naresh Kaushal, Advocate
for respondent No.2.

G.S. SANDHAWALIA, J. (ORAL)

The petitioners/landowners and the Corporation have challenged the order dated 26.06.2015 (Annexure P-9) vide which the Land Acquisition Collector, Department of Industries & Commerce, respondent No.1 has assessed a sum of Rs.1,75,000/- per acre as damages along with statutory benefits for the period the Corporation remained in possession i.e. 16.06.1994 prior to the date of notification under Section 4 of the Land Acquisition Act, 1894, (hereinafter to be referred as the 'Act') which was issued on 16.5.2002.

Both the Corporations and the landowners have challenged the order on different grounds namely as to get a tenable amount and the Corporation on the issue of the procedure which has been followed. The necessary facts go on to show that vide notification dated 11.11.1993 under Section 4 of the Land Acquisition Act, 1894, the Corporation sought to

acquire the land measuring 629.55 acres for industrial purpose at village Sohana, Tehsil Kharar, District Roopnagar, (Annexure P-1). In pursuance of the said notification, the Corporation also took possession of the land of the landowners due to the passing of the award dated 16.06.1994. Thereafter, second notification dated 16.05.2002, (Annexure P-2) came to be issued for 14K-4M of land for setting up industrial focal point in the same village which included the petitioners land measuring 8K-19M which is slightly over an acre. The same was followed by notification dated 12.07.2002 under Section 6 (Annexure P-3). The award was thereafter passed of 14K-4M on 08.07.2004 for a sum of Rs.3,60,000/- per acre. Resultantly, the Corporation for the first time was thus held entitled for the possession of the land of the petitioners in view of Section 16 of the Land Acquisition Act, 1894.

Section 16 reads as under:

“16. Power to take possession. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon [vest absolutely in the [Government]], free from all encumbrances.”

The possession thus became legal only from the date i.e. 16.05.2002 when notification under Section 4 of the Act was issued. The landowners filed a reference petition in which the compensation was enhanced on 30.01.2008 to Rs.21.59 lacs per acre. The landowners preferred a Regular First Appeal for further enhancement which was disposed of in a bunch the lead case being RFA No.3384 of 2008 on 10.07.2013 (Annexure P-4). Accordingly, this Court enhanced the compensation to Rs.25,65,600/- per acre for the land acquired in the year 2002. It was further directed that interest for the period prior to the issuance

of the notification under Section 4 of the Act cannot be awarded as the same has to be in the form of damages for use and occupation of land. Reliance was placed on the judgment of the Apex Court in ***Special Land Acquisition Officer Vs. Karigowda and others, (2010) 5 SCC 708***. Accordingly, liberty was given to the landowners to file an application before the Collector by 30.09.2013 for compensation on account of use and occupation of the land before issuance of notification under Section 4 of the Act. The relevant part of the said direction reads as under:

“iii. for compensation on account of use and occupation of the land before issuance of notification under Section 4 of the Act, the landowners shall be entitled to file application before the Collector concerned upto 30.9.2013.”

In pursuance of the said direction, initially the Collector rejected the legal notice dated 27.09.2014 which had been served by the landowners. The landowners filed COCP No.769 of 2015 wherein the Land Acquisition Collector appeared and tendered an unconditional apology since the order has been passed without giving due opportunity of hearing and accordingly assured that the order should be passed within a period of 2 months from the date of receipt of the certified copy subject to the co-operation of the parties. The relevant portion of the order reads as under:

“Mr. Pritpal Singh, Land Acquisition Collector, Punjab is present in the Court.

When hearing of the contempt petition was resumed, Mr. L.S. Virk, Addl. Advocate General, Punjab has passed on a vernacular copy of the order dated 14.01.2015 vide which legal notice sent by the petitioners was rejected. It has been fairly stated that said order was not enclosed vide letter dated 23.01.2015

(Annexure P-6).

Mr. Pritpal Singh, Land Acquisition Collector has made the unconditional apology in the Court by assuring that since order dated 14.01.2015 had inadvertently been passed, much less, even not communicated to the petitioners and, therefore, further undertakes & assures that in case an opportunity is granted, de hors of the existence of the observation dated 14.01.2015, would pass a fresh and speaking order containing detailed reasons, after giving appropriate opportunity of hearing to the parties strictly in accordance with law.

Mr. Pritpal, Singh, Land Acquisition Collector has further assured that in compliance with the directions contained in order dated 10.07.2013 (Annexure P-1) order shall be passed within a period of two months from the date of receipt of certified copy of the order subject to the cooperation of the parties.

It is made clear that the petitioners and PSIEC shall be at liberty to give their respective reply in support of the contention keeping in view the observations contained in the order dated 10.07.2013.

In view of the undertaking given by Mr. Pritpal, Land Acquisition Collector, present contempt petition is disposed of.

It is expected that Land Acquisition Collector shall pass the order strictly in letter and spirit of the directions contained in the order dated 10.07.2013 and in view of the undertaking given by this Court.”

Thereafter in view of the various applications filed, the impugned order was passed granting a sum of Rs.1.75 lacs per acre along with statutory benefits in view of the admitted fact that the possession had remained with the Corporation from the period of 16.06.1994 till the

subsequent notification under Section 4 of the Act was issued on 16.05.2002 and that was the rate of compensation given under the 1993 acquisition.

Counsel for the petitioners has vehemently submitted that compensation had been enhanced from Rs.1.75 lac which was further enhanced to Rs.8 lac per acre in the Regular First Appeal filed by those landowners on 23.08.2006 (Annexure P-7) in CWP No.17138 of 2015 for the said acquisition of 1993. Accordingly, he submits that similar relief should also be granted to the petitioners. Counsel for the Corporation on the other hand has submitted that procedure followed by the Collector was not justified as it was the compensation which had to be assessed on account of use and occupation as observed in judgment and therefore, the statutory benefits which had been granted along with compensation of Rs.1.75 lac per acre was not justified.

In the written statement filed by the Collector it has been averred that the total amount comes to Rs.5,64,973/- including 12% additional market value and interest at the rate of 9% and 15%. Counsel for the Corporation has further submitted that a sum of Rs.59,826/- as per calculation sheet prepared by the Land Acquisition Collector out of the above said amount Rs.59,826 has to be deducted towards income tax, therefore, the net payable amount is Rs.5,05,147/-. It is accordingly contended by the Corporation that the matter should be remanded afresh for redecision. Keeping in view of the above facts that quantification on the basis of the provision of Section 34 of the Act has been resorted to by the Collector is not justified. Section 34 talks about payment of interest and the amount of compensation not paid or deposited before taking possession of

the land. The damages had to be assessed by the respondent No.1 (LAC) as envisaged under Section 48 as held by the Apex Court in Karigowda's case (supra). In the present case, as noticed that possession was taken on account of an earlier notification dated 11.11.1993 for the land of the landowners measuring 8K-19M and was unauthorized. The formal acquisition process was started on 16.05.2002 and thereafter the possession as such was illegal prior to that date. As noticed the area of the land is little over one acre area for the period from 16.06.1994 to 15.05.2002 had remained in possession of Corporation which roughly translated to 8 years. If the amount as now calculated by the respondents is taken into consideration of Rs.5,64,973/- per acre, the amount comes to a little over Rs.70,000/- per year. The opinion of this Court that it is a reasonable amount of damages for the said land at that point of time in 1993/1994 to 2002 since one acre at that stage would not have fetched such a high rate even if it was to be leased out and would not have fetched more than Rs.30,000/- per acre totaling Rs.2,40,000/- for the 8 years. The balance amount of Rs.3,60,000/- would be the interest amount @ 10% p.a. which has now become payable since the payment has been delayed for 15 years. Therefore, this Court is of the opinion that a round figure of Rs.6 lacs would be adequate compensation for payment for the unauthorized possession of land by the State.

Resultantly, the writ petitions are disposed of by modifying the order dated 26.06.2015 and directing the Corporation to pay a lump sum of Rs.6 lacs. Resultantly, the Corporation shall deposit a lump sum of Rs.6 lacs within a period of one month from the receipt of the certified copy with the Land Acquisition Collector equally i.e. Rs.3 lacs to each in favour of the landowners in CWP No.17138 of 2015. The Land Acquisition Collector

shall thereof forthwith disburse the amount to the landowners. It is made clear that if the said amount is not paid, the landowners shall be entitled to further interest at the rate of 12% per year till the date of payment. With these above said directions the present writ petitions are disposed of.

09.01.2018
pvd/raman

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No