

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

**Civil Writ Petition No.2553 of 2016
Decided on : 01.02.2018**

Bhupinder Singh and another

... Petitioners

Versus

State of Punjab and others

... Respondents

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

Present: Mr. R.K. Samyal, Advocate
for the petitioners.

Ms. Jasleen Kaur Sidhu, AAG, Punjab
for respondents No.1 to 3.

Mr. Karan Gupta, Advocate
for respondent No.4

G.S. Sandhawalia, J. (Oral)

The petitioners seek directions for release of entire amount of compensation as assessed and allegedly accepted on 18.05.2015 (Annexure P-3), which is the assessment report issued by the Director, Horticulture, Punjab.

It is the common case of the parties that the petitioners were having 2 acres of land in village Narayangarh, Tehsil Derabassi, District SAS Nagar, which was acquired vide Award dated 17.11.2014 (Annexure P-1) passed by Land Acquisition Collector, SAS Nagar, Mohali, proceedings for which had been initiated under Section 4 of the Land Acquisition Act, 1894 (for short '1894 Act'), vide notification dated 23.07.2013.

It is the grouse of the petitioners that there were standing crops

on the land in question for which complete compensation has not been paid to them, since they were doing the work of fruits, vegetables, flowers, poly house etc. The matter had been entrusted to the experts who had conducted the survey and on account of the experts report dated 18.05.2015 (Annexure P-3), compensation was assessed as ₹1,74,47,594/. The partial compensation i.e ₹1,03,33,034/- has been paid to them and ₹71,14,560/- has been withheld, on account of the cost of production and selling price of the crops, which were standing on the land in dispute. It is in such circumstances, they seek directions that the complete amount as assessed by the experts should be paid to them.

It is not disputed that for the market value of the land in question which was assessed ₹66 lakhs per acre, the amount has already been paid and, thus, the dispute is only qua the amount of ₹71,14,560/- which has been withheld as per the assessment of respondent No.3-Director of Horticulture.

The defence of the respondents on the other hand is that the petitioners were allowed to harvest the crop and it was specified that the compensation of the crops will not be payable to the land owners as per the stipulation in the award, wherein the stipulation have been made as under:-

“The land owners can harvest crops sown during the paddy season 2014. The compensation of these crops shall not be awarded to the land owners.”

It was, thus, the case of the State that the crop of vegetables/flowers has already been harvested and no such crop was

retained by the acquiring department and, therefore, neither the cost of production nor the selling price of vegetable crop/flowers was payable. It has further been submitted that a petition under Section 73 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act') could be filed to get the compensation amount re-determined. Accordingly, it is the defence of the State that there was an alternative remedy available to the petitioners to seek re-determination and assessment made by the Horticulture Department.

Counsel for the petitioners has vehemently submitted that once an assessment had been made by an experienced person, the whole amount should be payable.

Mr. Karan Gupta, Advocate for respondent No.4 on the other submitted that respondents have not accepted the report of the experts and, therefore, once the crop had been harvested as such the payment has been also withheld.

Reference to provisions of Section 28 and 29 of the 2013 Act, which are *pari materia* to Section 23 of the 1894 Act would go on to show that while assessing the amount of compensation under Clause 2, the damages sustained by the person interested by reason of the taking of any standing crops and tress which may be on the land at the time of the Collector's taking possession thereof, as to be determined by using the services of a competent engineer or any other specialist in the relevant field. Section 28 and 29 (1) read as under:-

“28. Parameters to be considered by Collector in determination of award.—In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration—

firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and

seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

29. Determination of value of things attached to land or building.—

1) The Collector in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him.”

As noticed, it is apparent that a request was made on

19.03.2015, on the basis of which the assessment report dated 18.05.2015 (Annexure P-3) was submitted by respondent No.3.

It is, thus, apparent that the service of an experienced person was taken and on the basis of the said report though an amount has been released, but a substantial amount has also been kept back. In normal circumstances, the report as such would have been found mentioned in the main award itself and reasons would have been there in the award as to why the whole amount was not paid. But in the present case, the respondents have not passed any supplementary award in question, on the basis of the report of the experts, which can give a right to the petitioners as such to challenge on what basis they are withholding the balance amount.

It is on the basis of that the petitioners can always file an application under Section 64 of the 2013 Act which provides that for the determination of compensation by the authority, if a person has not accepted the award which is *pari materia* to Section 18 of 1894 Act.

The argument of the petitioners that the State would have taken deemed possession of the land from the date of the award and, therefore, they had not harvested any crop is an argument which raises disputed questions of fact. It is a settled principle of law that the writ Court will not go into such disputed questions and once there is an efficacious remedy available to the petitioners, they can always seek their redressal before the competent authority.

In such circumstances, the present writ petition is disposed

of with the directions to respondent No.2 to pass a supplementary award within a period of one month from the receipt of the certified copy of this order and supply the reasons to the land owners, so that, if they are aggrieved against the same, they can approach the Authority for the balance amount of compensation as assessed by the Horticulture Department.

FEBRUARY 01, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No