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

CWP No. 4661 to 2017 and other connected matters
Date of decision: 23.04.2018

Bhiwani Improvement Trust, Bhiwani ....Petitioner(s)

Versus

Suraj Parkash Makharia and others ...Respondent(s)

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

Present: Mr. Jagdish Manchanda, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J.

The present judgment shall dispose of 8 petitions i.e. CWP Nos. 4661 to 4663, 4667, 4668, 4672, 4681, 4682 and 4683 of 2017, as common questions of facts and law are involved in all the petitions. Reference is being made to ***CWP No. 4661 of 2017, Bhiwani Improvement Trust, Bhiwani vs. Suraj Parkash Makharia and others.***

The Improvement Trust challenges the judgment dated 20.03.2014 (Annexure P-1) passed by the Civil Judge, Sr. Divison, Bhiwani which has been upheld by the Additional District Judge on 24.12.2015 (Annexure P-3) whereby, the private respondent no. 1-claimant were held entitled to recover compensation of amounts ranging from Rs.10,000/- to Rs.1,48,000/-. They were also further held entitled for solatium @ 30% on the increased amount alongwith interest @ 9% per annum from the date of taking possession.

The acquisition in question was made vide award dated 02.06.1975 and proceedings had been initiated under Section 36 of the

Town Improvement Act, 1922 on 25.02.1975. The second notification in question was issued on 30.04.1975 before passing of the award on 02.06.1975. Initially, the District Judge-cum-President, Tribunal had passed his award on 24.07.1995 which was set aside by this court on 23.02.2013 for fresh decision by the competent Civil Court in view of the Haryana Improvement Trust Act, 2008. The acquisition was of 139695 square yards comprising in various khasra numbers which were situated opposite the State Bank of India on the Circular Road, Bhiwani for the purpose of Scheme No. 32 framed by the Trust. Since the private respondents were in possession of 24105 square feet of land which was in possession of the land as lessees and they were running industrial units in the name of M/s. Hari Krishan Makharia Powerlooms Factory, M/s. Shree Textiles, M/s. Shree saraswati Spinning Mills, M/s. Punjab Dyes & Chemicals Manufacturing Association, M/s. Bee Kay Textiles, M/s. B.K. Engineering Works, M/s. Makharia Traders, M/s. Panna Callico Printing Mills and M/s. Gopi Krishan Makharia Powerlooms Factory on the land in their possession.

The private respondents not being satisfied with the award whereby, compensation was granted only to M/s. Shree Textiles and M/s. B.K. Engineering Works to the tune of Rs.16,537.58/- and Rs.98,601.57/-, filed the references under Section 54 read with Section 102 of the Punjab Town Improvement Act, 1922 (in short 'the 1922 Act'). On account of the land being acquired, the grouse of the petitioners was that they had set up the units on the land occupied and constructed first class *pacca* buildings and installed machinery and the business was brought to the present status at the cost of tremendously huge employment of labour and investment of capital. That they had to shift their factories to some other places after constructing new buildings and had to shift their machines to the new site. The factories remained closed for 8 months because of shifting of machines and they had to keep skeleton staff and had to suffer great loss. The goodwill which had been earned was lost on account of shifting and the land being on lease, they had lost their tenancy and resultantly, amounts were claimed on the basis of building and machinery, loss on account of earning due to transfer of factory, additional over heads, expenses of shifting machinery, expenses incurred on retention of skeleton staff, restarting at the other places apart from solatium.

The defence of the Improvement Trust was that they were only lessees and their construction was unauthorized and was made against Municipal Rules and were temporary and removed by them after the land was acquired.

In pursuance of the issues which were framed, as many as 6 witnesses were examined who brought on record the permits for running the powerlooms, licenses, certificates of registration, allocation letters, expenses of skeleton staff, valuation reports, income tax assessment orders. The issues are as under:-

> *"1) Whether the petitioner is entitled to any amount on account of loss of goodwill, if so to what amount?opp.*
>
> *2) If issue no. 1 is affirmed, what was the area, location of the property acquired which was in possession of the petitioner as a tenant/lesses?OPP..*
>
> *3) What amount, if any, the petitioner is entitled to get as compensation in respect of the loss of tenancy rights in the acquired property? OPP.*
>
> *4) Whether the petitioner is entitled to any*

amount on account of disturbance due to the acquisition resulting in loss on account of building and machinery, if so to what amount? OPP.

5) Whether the claimant is entitled to any loss on account of transfer of the factory, if so to what amount? OPP.

6) Whether the claimant is entitled to any amount due to loss of earnings, if so to what amount?OPP (re-framed vide order dated 12.3.2014).

7) Whether the petitioner is entitled to any additional overhead expenditure likely to be incurred by the closing of the factory at one place and restarting the same at another, if so to what amount? OPP

8) Whether the petitioner is entitled to any costs allegedly incurred by them in preparation of the claim and pursuing the same before the Collector, if so to what amount? OPP

9) Whether the petition is time barred? OPD

10) Relief."

On the other hand, petitioner-trust only examined Sanjay Bansal as DW1 and placed on record 13 documents.

The evidence was discussed in detail by the trial Court of all the witnesses before the findings were given on issues separately. It was noticed that the testimony of the witnesses namely Bal Kishan Makharia, Gopi Kishan Makharia, Hari Kishan Makharia, Pawan Makharia and Kailash Chand Maklharia have gone un-rebutted regarding loss of goodwill and resultantly, under the said heading, various amounts ranging from Rs.3,000/- to Rs.18,000/- were awarded. On issue no. 2, the Civil Court came to the conclusion that compensation was claimed for 24106 square feet out of the total acquired land of 25700 square feet being lessee from

M/s. B.K. Engineering Works for different portions. The award of the Collector also assessed the total plinth area of the aforesaid units as 24105 square feet and, therefore, it was held that they were in possession of the said portions. Issue no. 3 regarding the compensation on account of loss of tenancy rights were not pressed as they were pending adjudication in separate proceedings. For the loss on account of building and machinery and the transfer of the factory, Sh. C.M. Mistri, Consulting Engineer and Valuer had been examined as PW6, who had proved the valuation reports from Exs. PW6/2 to PW6/23. The same was taken into consideration alongwith the testimony of the other witnesses.

The Trial Court came to the conclusion that the Consulting Engineer and Valuer alongwith A.P. Jain, Chartered Engineer and Sh. V.N. Bhargwa had conducted the spot inspection. As per the reports, their power looms were uprooted from one place could not be installed at another place as the same had become defective and unfit. The trial Court also noticed that necessary license and permits issued by the concerned authorities for running the aforesaid firms and permission granted under the Factories Act were already on record. The plea of the respondents that the building was not demolished by using bulldozers and resulting into destruction of the machinery and the building material was rebutted by concluding that there was nothing on record to show that the request of the petitioners was acceded to for giving more time to shift from the acquired land.

Keeping in view the amount granted by the Collector to M/s. Shree Textiles and M/s. B.K. Engineering, it was held that the compensation was indequate and unjustified because no reason or rationale had been prescribed how the compensation had been awarded. The units being separate entities and M/s. B.K. Engineering had sub let the vacant land to other 8 units, the evidence which had been produced before the Tribunal on earlier occasion accordingly had to be kept into consideration. Merely because C.M. Mistri had died during the proceedings, it was held that it was not sufficient to discard his valuation. The report had been discussed in detail and the loss which had been caused to the machines and materials which was to the tune of Rs.7,88,150/-. Resultantly, additional amount of Rs.6,00,000/- was granted on account of compensation over and above the amount already paid to the private respondents as under:-

"M/s. G.K. Makharia Powerlooms	*:Rs.40,000/-*
M/s. Panna Calico	*:Rs.1,05,000/-*
M/s. Makharia Traders	*:Rs.55,000/-*
M/s. B.K. Engineering	*:Rs.20,000/- (over and above amount already paid)*
M/s. B.K. Textiles	*:Rs.90,000/-*
M/s. Punjab Dyes and Chemicals	*:Rs.1,05,000/-*
M/s. Shree Saraswati Spinning Mill	*:Rs.10,000/-*
M/s. H.K. Makharia Powerlooms	*:Rs.50,000/-*
M/s. Shree Textiles	*:Rs.1,25,000/- (Over and above the amount already paid)"*

Similarly, on issue nos. 6 and 7, amounts ranging from Rs.5,000/- to 19,000/- were awarded under the heading of loss due to closure of factories and for retention of skeleton staff and additional over heads. M/s. Shree Saraswati Spinning Mills was not held entitled to any compensation on account of having a godown. The private respondents have been denied any costs in preparation of the claim and pursuing the same before the Collector by holding that it could not be loss on account of compulsory acquisition. The issue of limitation was decided against the petitioner-trust on account of the fact that the remand was by this Court and the petitions had been filed well within time which had earlier been decided by the Tribunal on 24.07.1995. Resultantly, the amounts were quantified in relief clause and the entitlement of solatium @ 30% was also granted alongwith interest @ 9% from the date of taking possession till actual payment.

The Lower Appellate Court examined the evidence and the findings of the trial Court and has come to the conclusion that units were separate entities and were working separately and, therefore, entitlement of compensation was separate to all of them. The loss had been caused on account of acquisition of the land under occupation. The reports had been produced before the Tribunal by Sh.C.M. Mistri from Exs. PW6/2 to PW6/23, on the basis of which, the additional sum of Rs.6,00,000/- was granted and resultantly, finding has been recorded that it was based on proper appreciation of the material on record and the evidence. The additional amount was granted on account of loss of business due to closure of factory and for retention of skeleton staff and the witnesses belonging to the Makharia family had appeared and similarly, Sh. Surender Kumar Patodia, Head Timekeeper had also appeared, which evidence had not been rebutted and findings as such recorded were thus upheld.

Counsel for the petitioner mainly tried to argue that the loss on account of shifting is not valid and the amounts awarded were not justified. Reliance was placed upon a communication dated 10.06.1975 to a letter addressed to the Chairman, Improvement Trust that the machines had been shifted and the work was in progress and the industry had requested that they would vacate the premises. A perusal of the said document would also go on to show that it was mentioned that it was known that the auction of malba was fixed on 11.06.1975 at 5.00 p.m. and the report was submitted for orders and there was a mere endorsement of discussion and nothing was placed on record that time was given till 15.06.1975. as prayed for, which would go on to show that the compensation on account of demolition also is rightly justified. The letter dated 06.04.1975 for resettlement which would have disentitled the private respondents to any claim as contended on an earlier occasion was never brought on record to show that the industry was disentitled as such from seeking compensation. Even otherwise, the letter dated 08.04.1975 would also go on to show that there was a proposal to allot land due to the displacement and the private respondents had asked as to what concession would be given to grant the value of the plot which was to be allotted. Reference could not be made to any allotment letters as such in favour of the industry from Exs. D1 to D13 which finds mention in the orders of the Trial Court.

Under Section 23 of the Land Acquisition Act, 1894 (in short 'the 1894 Act') under clause (4), it is provided that if any damage is sustained by the person at the time of Collector taking possession of the land and by reason of the acquisition, the other properties are injuriously affected either movable or immovable is a matter to be considered in determining the compensation. Similarly, under clause (5) of Section 23, a person who is compelled to change his place of business, the reasonable expenses, if any, incident to such change, are also factors to be kept in mind.

The compensation, thus, which is awarded by the trial Court below which having been duly upheld by the Appellate Court under the said headings, therefore, cannot be held to be unjustified or that there was lack of jurisdiction of the said Court, which an argument was sought to be projected by the counsel for the improvement Trust. The 1922 Act, under which the proceedings were initiated, gives reference of the 1894 Act under Section 59 and sub-clause (b) further provides that the said Act would be subject to other modifications indicated in the Schedule to the 1922 Act. Further amendment has been made to Section 23 of 1894 Act under the Schedule. The said Act of 1922 was replaced by the State of Haryana by the Haryana Town Improvement Act, 2008 and the relevant date as such would be the date of initiation of acquisition proceedings under the 1922 Act for assessing the market value.

Therefore, no fault can be found in the well reasoned orders passed by the Courts below, which are based on factual aspect on the basis of the evidence, which was led by the private respondents. The conclusions arrived at would not justify any interference in writ jurisdiction as the procedure which has been followed does not suffer from any infirmity or illegality which would compel this Court to exercise its discretionary jurisdiction under Article 226 of the Constitution of India.

Accordingly, the present writ petitions are dismissed in limine.

23.04.2018 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No