

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-
RFA No. 3643 of 2014 (O&M)
Date of decision: 01.03.2018

Sital Singh

... Appellant

Vs.

State of Punjab & Anr.

...Respondents

<i>Appeals filed by State</i>	<i>Appeals filed by PUDA</i>	<i>Appeals filed by Landowners</i>
R.F.A Nos. 10360, 10361, 10362, 10363, 10364, 10365 and 10366 of 2014	RFA Nos. 4152, 4153, 4154, 4155, 4156, 4157 and 4158 of 2014	RFA Nos. 3642, 3643, 3644, 3645, 3646, 3647, 3648 of 2014

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

Present: Mr. Santosh Sharma, Advocate, for
Mr. Alok Mittal, Advocate, for the landowners.

Ms. Akshita Chauhan, AAG, Punjab.

Mr. Balwinder Singh, Advocate, for PUDA

Mr. Arun Jain, Sr. Advocate, with
Mr. Varun Parkash, Advocate, for the respondents
in RFA No. 10361 of 2014 and 10366 of 2014

G.S.SANDHAWALIA, J. (Oral)

Present judgment shall dispose of the above mentioned appeal filed under Section 54 against the award of Reference Court, Kapurthala, dated 28.09.2013. The notification for acquisition under Section 04 of the Land Acquisition Act was issued on 11.08.2000 whereby 392 kanals 12 marlas of land sought to be acquired of village Alla Dad Chak and 165 Kanals 3 marlas of village Machhi Joa, totaling upto 537 kanals and 14

marlas.

The Land Acquisition Collector had awarded compensation by adopting the principle of belting vide the award dated 05.12.2001 and which was maintained by another Reference Court on 24.05.2004. The landowners in the present set of cases had challenged the acquisition proceedings and their writ petitions (Ex.R-8) ultimately came to be dismissed on 06.08.2008 (Ex. R-9) and the SLP was dismissed on 28.11.2008 (Ex. P-48), resultantly they filed reference petitions on 11.04.2009. Vide impugned award dated 28.09.2013 the landowners were held entitled to compensation at Rs.8,20,000/- per acre for village Alla Dad Chak and Rs.6,26,000/- per acre for the land situated in village Machhi Joa in addition to solatium and other statutory benefits.

Against earlier award dated 24.05.2004 of the Reference Court whereby enhancement had not been granted, the other landowners had preferred appeals before this Court bearing RFA No. 1818 of 2004 Sadhu Singh & Anr. Vs. State of Punjab etc. and which were decided on 28.09.2012. The valuation was fixed at Rs.8.20 lakhs per acre for Village Alla Dad Chak and Rs.6,26,000/- per acre for village Machhi Jao. The Reference Court in its award dated 28.09.2013 thus chose to follow the said decision and rejected the plea of the State that the reference petitions were time barred.

The earlier landowners being not satisfied had approached the Apex Court in Civil Appeal No. 5105 of 2013 **Avtar Singh Vs. State of Punjab** (Annexure A/1) wherein keeping in view sale deed dated 03.09.1997 Ex. P/25 (in that case) the valuation has been done at

Rs.9,72,000/- after granting enhancement since the notification was dated 11.08.2000. Since the land was acquired as a single block for housing purposes, the same amount of compensation has also been awarded vide order dated 08.11.2017. The relevant portion reads as under:-

“ We have another exemplar in the form of Exhibit P-25 which had been taken into consideration by the High Court. It evinces the prices of 16 kanal of land at the value of Rs.16,40,000/- by which amount comes to Rs.8,40,000/- per acre. The High Court has observed that 20% of the amount was required to be deducted in the facts and circumstances of the case towards development. If we deduct 20% of the amount out of the said figure, the amount would come to Rs.6,56,000/- (Rs.8,40,000 - Rs.1,64,000 = Rs.6,76,000/-). Now, if we grant 15% increase for three years as the sale deed was executed on 3rd September, 1997 and acquisition had been made after three years on 11.08.2000, considering the evidence available in this case of escalation of price the amount would come to Rs.9,71,400/- the same is rounded off to Rs.9,72,000/- (Rupees Nine Lakhs Seventy Two Thousand only). That we award with statutory benefits for Alladad Chak.

Coming to the village Machhi Joan it is apparent that land has been acquired for housing purpose under the same notification as a single block; land of village Alladad Chak and Machhi Joan is adjacent, the sale deed Exhibit P-25 is the land adjacent tot he area that has been acquired of village Alladad

Chak. It would not be appropriate to take into consideration the exemplar carrying lesser value of village Machhi Jaon but to adopt the same exemplar for village Aladad Chak; Exhibit P-25; of as that is adjacent and forms part of single block and that has been adopted for determination of the compensation for Alladad Chak. Thus, as the land had been acquired in a single block for the housing purpose and potentiality of the land of both villages is apparently similar, we award the compensation determined for village Alladad Chak to the land acquired at Machhi Jao village also, alongwith all statutory benefits as envisaged under the Act.

The appeals, are allowed to the aforesaid extent.

No order as to costs.”

In such circumstances applications have been filed for disposal in same terms.

Coming to the issue of limitation which has been raised by the State in its appeals, it is to be noticed that a specific plea was taken as to the fact that the references were barred by limitation and the amount awarded by the Collector had been received by the appellants without protest. The issues were framed on 07.01.2012 to the following effect, by the Reference Court which read thus:-

- “1) Whether the petitioners are entitled for enhancement of the compensation? OPP*
- 2) Whether the land references are within period of limitation. OPP*
- 3) Whether the petition is bad for non-joinder of the necessary parties? OPR*

- 4) *Whether the petition is not maintainable in the present form?*
- 5) *Relief.”*

From the above issues, it would be clear that the onus as such was wrongly put upon the land owners that the land references are within the period of limitation whereas, the same could have been covered under issue no. 4 that they were not maintainable and were liable to be dismissed on the ground of limitation. Once the State had put up the issue of limitation, it was for the State as such to prove the fact that the references were beyond the period of limitation. The Reference Court accordingly, while deciding issue no. 3, noticed that the writ petition was filed after issuance of the notification and before the award had been passed and no evidence has come on record that the award dated 05.12.2001 had ever been communicated to the appellants.

Reliance was placed upon the provisions of Section 18 regarding the communication to be made of the notice by the Collector under Section 12(2) or within six months from the date of the Collector's award, whichever period expired first. Resultantly, it was held that nothing had come on file that the petitioners had ever joined at the time of passing the award nor any evidence had come on file that they were present at the time of passing of the award. A finding was further recorded that no evidence had come on record that they were supplied the copy of the award. They had approached the Apex Court against the order dated 06.08.2008 and the Apex Court had dismissed their petitions on 28.11.2008 in their absence and they had applied for the reference on 11.04.2009 which was within limitation.

Counsel for the petitioners is right in placing reliance upon the judgment of the Apex Court in ***Bhagwan Das and others vs. State of U.P. and others, 2010 (3) SCC 545*** to contend that the actual knowledge of the essential contents of the award would be the date of knowledge and, therefore, once the onus was on the State that the Award had been communicated, necessary evidence should have been brought on record to this aspect to dislodge the petitions under Section 18 on the ground of limitation. The relevant part reads as under :-

“11. When a land is acquired and an award is made under [section 11](#) of the Act, the Collector becomes entitled to take possession of the acquired land. The award being only an offer on behalf of the Government, there is always a tendency on the part of the Collector to be conservative in making the award, which results in less than the market value being offered. Invariably the land loser is required to make an application under [section 18](#) of the Act to get the market value as compensation. The land loser does not get a right to seek reference to the civil court unless the award is made. This means that he can make an application seeking reference only when he knows that an award has been made. If the words six months from the `date of the Collector's award' should be literally interpreted as referring to the date of the award and not the date of knowledge of the award, it will lead to unjust and absurd results. For example, the Collector may choose to make an award but not to issue any notice under [section 12 \(2\)](#) of the Act, either due to negligence or oversight or due to any ulterior reasons. Or he may send a notice but may not bother to ensure that it is served on the land owner as required under [section 45](#) of the Act. If the words `date of the Collector's award' are literally interpreted, the effect would be that on the expiry of six months from the date of award, even

though the claimant had no notice of the award, he would lose the right to seek a reference. That will lead to arbitrary and unreasonable discrimination between those who are notified of the award and those who are not notified of the award. Unless the procedure under the Act is fair, reasonable and non-discriminatory, it will run the risk of being branded as being violative of [Article 14](#) as also [Article 300A](#) of the Constitution of India. To avoid such consequences, the words 'date of the collector's award' occurring in proviso (b) to [section 18](#) requires to be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award.

12. The following position therefore emerges from the interpretation of the proviso to [section 18](#) of the Act :

(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector under [section 12\(2\)](#).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice under [Section 12\(2\)](#) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice under [section 12 \(2\)](#) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice under [section 12\(2\)](#) of the Act was the date of knowledge of the contents of the award.

A person who fails to make an application for reference within the time prescribed is not without remedy. It is open to him to make an application under [section 28A](#) of the Act, on the basis of an award of the court in respect of the other lands covered by the same acquisition notification, if there is an increase. Be that as it may.

13. When a person interested makes an application for reference seeking the benefit of six months period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice under [Section 12\(2\)](#) of the Act, and that he did not have the knowledge of the contents of the award during a period of six months prior to the filing the application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the Land Acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice under [Section 12\(2\)](#) of the Act, or that he had knowledge of the contents of the award. Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the Mahazar/Panchnama/proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the state or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person

interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances to not to do so.

A perusal of the record would go on to show that Section 4 notification is dated 11.08.2000 and the first set of litigation was initiated on 18.06.2001 (Ex. R-4) in the form of CWP No. 8686 of 2001. The second writ petition i.e. ***CWP No. 19045 of 2001, Gurdial Singh and others vs. State of Punjab and others*** (Ex.R-5) is also dated 04.12.2001. An averment was also specifically made that the award will be passed on 05.12.2001, which was accordingly passed on the said date. The averment reads thus:-

“17. That after the receipt of the notices dated 9.5.2001, the petitioners again filed their separate objections before the respondent No. 3, but the respondent No. 3 without considering the same is going to pass the award on 5.12.2001 and has summoned the petitioners orally to appear before him of 5.12.2001 for hearing the award. A copy of one such objections dated 28.5.2001 filed by Petitioner No. 1 to 5 is being annexed as Annexure P/14 and the others are similar.”

The writ petitions were dismissed on 13.08.2002 (Annexure R-6) on the ground that some of the area had been left from the acquisition while other objections were rejected.

The second round of litigation was thereafter initiated on 24.05.2004 by filing ***CWP No. 8327 of 2004, Charan Singh vs. State of Punjab*** which is dated 17.05.2004 (Ex.R-8), which was eventually dismissed on 06.08.2008 (Ex.R-9). ***The Special Leave to Appeal (Civil) CC No. 15394 of 2008*** came to be dismissed on 28.11.2008 (Ex.P-48) and thereafter, the reference petition dated 11.04.2009 was preferred.

Counsel for the land owners, thus, is well justified to hold that the issue of limitation was rightly decided in favour of the land owners as there was no specific communication of the contents of the award to them. Even otherwise, a perusal of the affidavit of RW-1-Sohan Lal, Patwari, tendered in evidence dated 19.09.2013 (RW-1/A) would show that only a bald averment is made that the present land references are time barred and no specific instances were given as to the fact that the Collector's award had been passed on 05.12.2001 and on what date it had been communicated to the land owners. As noticed, the onus should have been placed upon the State, it was their bounden duty to prove these facts that the award and its contents had been communicated to the land owners and on that account, the reference petition would be barred by limitation. In the absence of having failed to discharge their duty, the land owners in the negative could not prove as such that the award had been communicated and in such circumstances, the Reference Court was justified in coming to the conclusion that the reference petitions were within limitation.

Resultantly, keeping in view the above, once the matter has been finalised regarding the same notification, the appeals filed by the State of Punjab and PUDA are dismissed and of the landowners are allowed. Uniform compensation to the tune of Rs.9,72,000/- per acre along with all statutory benefits are granted to them.

March 01, 2018
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(G.S. SANDHAWALIA)
JUDGE

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