

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

(1) **RFA No.960 of 2018 (O&M)**

Jeewan Singh & others		... Appellants
	Versus	
State of Haryana and others		... Respondents

(2) **RFA No.961 of 2018 (O&M)**

Darshan Singh (deceased) th. LRs		... Appellants
	Versus	
State of Haryana and others		... Respondents

(3) **RFA No.962 of 2018 (O&M)**

Baldev Singh & others		... Appellants
	Versus	
State of Haryana and others		... Respondents

(4) **RFA No.963 of 2018 (O&M)**

Gurmangat Singh & others		... Appellants
	Versus	
State of Haryana and others		... Respondents

(5) **RFA No.964 of 2018 (O&M)**

Khazan Chand & another		... Appellants
	Versus	
State of Haryana and others		... Respondents

Decided on : 29.05.2018

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

Present : Mr.Ashwani Bakshi, Advocate, for the appellants.

G.S. Sandhawalia, J. (Oral)

Applications for condonation of delay

Applications for condonation of delay of 24 days in filing the appeals, are allowed, in view of the nominal delay and in view of the averments made in the applications, duly supported by affidavit. Delay of 24 days in filing the appeals is, hereby, condoned.

CMs stand disposed of.

RFA No.960 to 964 of 2018 (O&M)

CM-2525-CI-2018 in RFA-961-2018

Application has been filed for impleading the LR's of the deceased-Darshan Singh, who is stated to have expired on 14.06.2015. The legal representatives have been mentioned in para 4 of the application and it has been averred that there are no other legal heirs.

Accordingly, in view of the averments made in the application, duly supported by an affidavit, same is allowed. The legal representatives, as mentioned in para 4 of the application, are allowed to be brought on record, only for the purpose of pursuing the present litigation. Amended memo of parties is taken on record, subject to just exceptions. Office to append the same at appropriate place.

CM stands disposed of.

RFA-960 to 964-2018

The present judgment shall dispose of 5 appeals, bearing RFA-960 to 964-2018, arising out of the same award dated 24.07.2017, whereby the Reference Court, Sirsa, had dismissed the reference petitions filed under Section 48 of the Land Acquisition Act, 1894 (for short the 'Act') whereby compensation was sought for the land which was subject matter of acquisition.

The reasoning given by the Reference court is that the award was not passed within 2 years from the date of publication and therefore, the acquisition had lapsed under Section 11-A of the Act. Therefore, the petition for claim of compensation sought would not arise as it was a case of statutory lapse. The said view was taken in view of the judgment of

the Apex Court in ***Rajinder Singh Bhatti & others Vs. State of Haryana & others 2009 (11) SCC 480.***

Counsel for the appellant-landowners has argued that the provisions under Section 48(1) would be applicable even in case possession had not been taken, in view of the wording of Section 48(1) of the Act. It was submitted that it amounted to withdrawal from acquisition and there was loss and damage suffered by the landowner in consequence of the notice or any proceedings and therefore, the Reference Court was in error in dismissing the petition being not maintainable.

The section 4 notification was issued on 27.08.2008, for 985 kanals 4 marlas of land for developing Sector 20, HUDA, Sirsa, followed up by Section 6 notification dated 26.08.2009. The award was only passed on 28.09.2013 but was not published within 2 years of the publication of the notice under Section 6 of the Act and therefore, the proceedings lapsed under Section 11-A of the Act. Section 11-A reads as under:

“11A. Period shall be which an award within made. -

(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.”

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In the absence of the award being passed, the right to take possession of the land under Section 16 never arose, since Section 16 provides that by taking possession upon making of the award under Section 11 title shall thereupon vest absolutely on the Government. 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.”

It is, thus, apparent that the landowners remained in possession throughout on account of the award not being made within the prescribed period, within 2 years, as provided under Section 11-A of the Act. The Apex Court in **Rajinder Singh Bhatti** (supra), in similar circumstances, where the award was not announced, discussed the issue threadbare as to whether the claim of compensation under Section 48(2) of the Act was maintainable or not. In the said case also, the Collector had informed the landowners that their claim was not maintainable, in view of the judgment passed by the Apex Court in **Abdul Majeed Sahib Vs. District Collector (1997) 1 SCC 297**. Resultantly, the said order had been challenged before this Court in revision which was dismissed on 07.11.2000. The matter, thus, reached the Apex Court, wherein the following legal issue came up for consideration:

“15. On the contentions urged, two points arise for our consideration:

(one) Whether in view of the decision of the government in not approving the award proposed by the Collector, the award could not be made within the period of two years from the

date of publication of declaration (final notification under [Section 6](#)) and the acquisition of land lapsed, would such lapse of acquisition proceedings amount to withdrawal from the acquisition by the State Government under [Section 48\(1\)](#) of the Act ?”

The question was answered as under:

“23. From the perusal of [Section 11](#), particularly first proviso thereto, it is apparent that the approval of the appropriate government to the award proposed by the Collector is mandatory. In other words, it is imperative for the Collector to seek previous approval of the appropriate government to the award that he proposes to make unless the case is covered by [Section 11\(2\)](#). If an award under [Section 11](#) is not made by the Collector within a period of two years from the date of the publication of the declaration, the entire proceedings for the acquisition of the land shall lapse under [Section 11-A](#). [Section 11-A](#) provides maximum period within which the award from the date of the publication of the declaration has to be made. In default, the consequence is that the entire proceedings for the acquisition would lapse. [Section 48\(1\)](#) empowers the State Government to withdraw from the acquisition of any land subject to two conditions namely; (i) the case is not provided under [Section 36](#) and (ii) that possession has not been taken. Section 11- A and the consequence provided therein i.e., lapse of acquisition proceedings in the event of the award having not been made within a period of two years from the date of publication of the declaration under [Section 6](#) is entirely distinct and different than the decision that the government may take for withdrawal from the acquisition under [Section 48\(1\)](#), provided possession has not been taken. It is only in a case where the Government withdraws from the acquisition under [Section 48\(1\)](#), that by virtue of [Section 48\(2\)](#), the claim for compensation for the damage suffered by the owner in consequence of the acquisition proceedings together with

costs could be made. The statutory lapse of acquisition proceedings under [Section 11-A](#) as a result of non-grant of approval of proposed award by the State Government or for any other reason would not tantamount to withdrawal from acquisition by the State Government as contemplated under [Section 48\(1\)](#). As a necessary corollary, no claim for compensation could be made under [Section 48\(2\)](#) of the Act.

24. In the context of [Section 48](#), the word "withdraw" is indicative of the voluntary and conscious decision of the government for withdrawal from the acquisition; statutory lapse under Section 11- A is entirely different. The object of [Section 11-A](#) is to arrest delay in making award. An obligation is cast on the Collector under [Section 11-A](#) to make the award within the time prescribed therein failing which statutory consequence follows namely, acquisition proceedings lapse automatically. This Court in Abdul Majeed said:

"The word 'withdraws' would indicate that the Government by its own action voluntarily withdraws from the acquisition; the Government has necessarily to withdraw from the acquisition, in other words, there should be publication of the withdrawal of the notification published under [Section 4\(1\)](#) and the declaration published under [Section 6](#) by exercising the power under [Section 48](#) (1). Sub-section (2) of [Section 48](#) would then apply. In this case, admittedly, the Government had not exercised the power under [Section 48\(1\)](#) withdrawing from the notification under [Section 4\(1\)](#) or the declaration under [Section 6](#). The statutory lapse under [Section 11-A](#) is distinct different from voluntary act on the part of the Government. Therefore, it must be by withdrawal of the notification by voluntary act on the part of the State under [Section 48\(1\)](#). Under these circumstances, the appellant is not entitled to avail of the remedy of sub-section (2) of

Section 48."

25. As a matter of fact, the Land Acquisition Collector followed Abdul Majeed and held that the claim of the appellants under Section 48(2) was not maintainable.

26. As noticed above, the Land Acquisition Collector moved the government seeking its approval for the proposed award. This was imperative as per the first proviso to Section 11. The government considered the matter and did not approve the proposed award. When no such approval was granted by the government, the Collector could not have made the award and in fact he did not. As a result thereof, the acquisition proceedings lapsed. The lapse of acquisition proceedings in the circumstances under Section 11-A cannot and would not amount to withdrawal from acquisition by the government under Section 48(1). We answer the point (one) in negative."

The facts in the present case are also similar in as much as the award was never passed and possession never having been taken and the same having remained with the landowners, therefore, the Reference Court was well justified in coming to the said conclusion.

Resultantly, no error apparent on the face of the award can be found. Consequently, the present appeals are dismissed in limine.

MAY 29, 2018

sailesh

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

**(G.S. SANDHAWALIA)
JUDGE**