

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

FAO No.1092 of 2009

Union of India

... Appellant

Versus

Smt. Surjit Kaur and others

... Respondents

(2)

FAO No.1093 of 2009

Union of India

... Appellant

Versus

Gurbachan Singh and others

... Respondents

Decided on : 27.08.2019

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

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Arun Gosain, Advocate and
Mr. Varun Issar, Advocate for the appellant-UI.

Mr. Vivek K. Thakur, Advocate
for the respondents-landowners.

Ms. Jasleen Kaur Sidhu, AAG, Punjab.

G.S. Sandhawal, J. (Oral)

The present order shall dispose of two appeals i.e. FAO Nos.1092 and 1093 of 2009, filed under Section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short '1952 Act') against the Award of the Arbitrator dated 25.11.2008, who was the District Judge, Bathinda. The facts are being taken from **FAO No.1092 of 2009 'Union of India Vs. Smt. Surjit Kaur and others'**.

2. The Arbitrator while fixing the market value of the land which was acquired had relied upon earlier awards passed by the Arbitrator for the same notification dated 20.01.1975 and granted the compensation as under:-

1.	For the land situated on either side of National Highway leading from Bathinda to Barnala upto a depth of 500 meters.	Rs.16.80 per square yard
2.	For the land upto a depth of 500 meters from the Municipal limits/fencing of the Cantonment or from the boundary of III Phase of Urban Estate of Bathinda Town.	Rs.16/- per square yard
3.	For the rest of the acquired land.	Rs.8.50 per square yard

3. Apart from the above, it was directed that in case the land of the claimants falls both in the first and second category, it would be treated in the first category and the claimants would be entitled to compensation @ Rs.16.80/- per square yard. Additional amount of 15% of solatium was also granted alongwith 6% interest per annum on the total sum of compensation from the date of the acquisition i.e. 20.01.1975.

4. At the point of time the appeals were admitted on 15.05.2009, interim relief was granted that the amount of solatium shall not be disbursed to the respondents.

5. Senior Counsel for the Union of India has brought to the notice of this Court that the specific pleadings as such to this extent had been taken regarding the execution of Form 'K', which had also been brought on record as Ex.R1/A and this fact has also been noticed by the Arbitrator. However, the reasoning given by the Arbitrator was that it

had not been pleaded that Form 'K' was executed by the landowners and therefore, no enhancement should be allowed. Accordingly, the Arbitrator had come to the conclusion that any evidence beyond pleadings is not to be allowed on account of the fact that no witness had come forward to prove that Niranjana Singh, previous landowner had executed Form 'K' in his presence. The finding reads as under:-

“8. Learned counsel for the Union of India Shri M.R. Gupta, has heavily relied upon Form-K Ex.R.1/A stating that once the Form-K is executed, as in the present case, the land owner is not entitled to enhancement of compensation. Form K has been produced allegedly executed by Niranjana Singh son of Gurbax Singh. First of all, it is to be seen that no plea was taken in the written reply that Form K was executed by the land owners and, therefore, no enhancement should be allowed. Therefore, any evidence beyond pleading is not to be allowed. Secondly, no witness has come forward to prove that Niranjana Singh, previous land owners had executed Form-K in his presence. Bishamber Dass RW-1 has clearly admitted that Form-K was not filed in his presence. So, merely production of document does not mean that it has been proved in accordance with law.”

6. A perusal of the record as such would go on to show that there was a written statement filed by the Special Land Acquisition Collector, Jalandhar in which there was no such pleading regarding Form 'K'. However, in the written statement filed on behalf of the Union of India it has been specifically mentioned that Form 'K' had been executed and Rs.1,29,239.58 had been paid to the landowner-Niranjana Singh for 59 bighas 10 biswas of land, whereas Rs.19,736.30 was paid to his father

Gurbax Singh for 6 bighas 15 biswas of land. Detail of Form 'K' No.92 dated 23.08.1975 of Niranjana Singh son of Gurbax Singh and Form 'K' bearing No.90 of Gurbax Singh have been clearly mentioned.

7. A perusal of Ex.R1/A and Ex.R1 would go on to show that Form 'K' No.92 and 90 are mentioned therein which were executed by Niranjana Singh and Gurbax Singh. The claim for enhancement had been filed by Niranjana Singh and the respondents No.1 and 2 are the daughters of Niranjana Singh being the legal representatives of Niranjana Singh who were brought on record. Similar is the position in **FAO No.1093 of 2009**, wherein Gurbax Singh and Pritam Singh have signed Form 'K'.

8. Section 8 (a) of the 1952 Act provides the principle of determining the compensation, which is to be done by agreement. Section 8 (b) provides that where no such agreement is reached, the Central Government shall appoint an arbitrator and Section 8 (e) further provides that the Arbitrator after hearing the dispute shall make an award determining the amount of compensation. The said provisions read as under:-

“8. Principles and method of determining compensation--

(1) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,—

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the

Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as, a Judge of a High Court;

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(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable.”

9. It is, thus, apparent that once an agreement as such is entered between the parties, the question of appointment of an Arbitrator would not arise. It is not disputed that in the present case also initially, the Arbitrator had been appointed on 25.03.2004 and, thereafter, the appointment had been rescinded on 18.10.2004. It was, however, restored on 10.09.2007 (Ex.R10). In such circumstances, the matter had been referred to the Arbitrator.

10. A three Judge Bench of the Apex Court in **Dayal Singh & Ors. vs. Union of India & Ors. (2003) 2 SCC 59** has held that the 1952 Act is a self-contained code and the provision of the 1894 Act cannot be applied to it. It has further been held that once parties entered into an agreement in terms of clause (a) of sub-section (1) of Section 8, thus, the same would fall within the realm of a contract, and parties thereto would ordinarily be bound thereby unless the same is vitiated by fraud, misrepresentation etc. Merely because by subsequent award the enhanced compensation has been paid for similar class of land in the case of

landowners who had not entered into an agreement under Form 'K' would not as such give a right to the landowners to reopen the proceedings. The relevant portion of the said judgment reads as under:-

“31. The parties herein entered into agreements in terms of clause (a) of sub-section (1) of Section 8 and, thus, the same falls within the realm of a contract, and parties thereto would ordinarily be bound thereby unless the same is vitiated by fraud, misrepresentation etc.

32. Once the matter is concluded by a contract, a novation of contract would also fall within the realm of contract only. If the contention of Mr. Narasimha is accepted, a contract can be reopened only with the agreement of both the parties. The parties must be ad-idem therefor.

33. The person whose lands were acquired, thus, having entered into an agreement cannot be said to have any legal right which can be enforced in a court of law so as to enable him to obtain an order from the Court directing the Union of India to reopen the agreement; only because by reason of a subsequent award an enhanced amount of compensation has been paid for similar class of lands. If a right to get the amount of compensation re-determined is held to be implicit in the Act, the same for all intent and purport would amount to invoking the provisions of Section 28A of the Land Acquisition Act indirectly which cannot be done directly. It is a well-settled principle of law that what cannot be done directly cannot be done indirectly.

34. The enforceable right to re-open a proceeding, which has attained finality, must exist in the Statute itself.

35. The right to get the amount of compensation re-determined must expressly be provided by the statute. Such a right being a substantive one cannot be sought to be found out by implication nor can the same be read therewith.

36. The appellants, thus, cannot invoke a right by reading the

same into a statute although admittedly there exists none.”

11. It is, thus, apparent that Niranjana Singh and his father Gurbax Singh had entered into an agreement and signed on Form 'K', thus, were estopped as such from claiming the appointment of an Arbitrator for enhancement of compensation by virtue of an agreement. The Arbitrator was, thus, not justified in coming to the conclusion that no plea was taken in the written reply that Form 'K' was executed and merely because the official witness submitted that Form 'K' was not filled up in his presence it would mean that it had been proved in accordance with law. It has to be noticed that the acquisition was of 20.01.1975 and RW-1, Bishambar Dass had put in appearance and had been cross-examined on 30.10.2008. It was not possible as such for the concerned official to be produced at that point of time after 30 years and the observations as such made that the said witness could not depose regarding the filling up of the Form 'K' is without any basis.

12. Counsel for the Union of India has also relied upon the judgment of the Apex Court passed in '**Union of India Vs. Munsha and others'** 1995 (8) JT 289, wherein the Apex Court has also observed that the interested person has to be communicated as to the non-acceptance of the offer and then there is need to appoint the Arbitrator. In such circumstances, the finding as such which has been recorded by the Arbitrator are perverse and not sustainable regarding the factum of the execution of the Form 'K'.

13. The maintainability of the petition had also been objected not

only by the Special Land Acquisition Collector, but even by the Union of India in their preliminary objections. An issue as such had been framed and, thus, the finding which has been recorded on issue No.1 that the claimants are entitled for the enhanced compensation and the petition was maintainable is also not justified.

14. However, the fact remains that the land was acquired way-back on 20.01.1975 and no stay was granted for the enhancement as such and the enhancement was granted on the basis of the relief granted to the similarly situated persons. In such circumstances, this Court does not feel that the Union of India as such would have a right to recover the amount which has already been disbursed to the respondents.

15. It is also to be noticed that Gurbax Singh father of Niranjn Singh had filed **CWP No.2440 of 1983** seeking directions of referring the case for enhancement of compensation to the Arbitrator, which had been admitted. Due to want of record which was not produced and not being traceable directions were issued for appointment of Arbitrator on 02.05.2007 (Ex.A4). Thus, the landowners have been in litigation between the period 1975 to 2007 onwards and in such circumstances it would not be appropriate as such to permit the Union of India to recover the amount which has been received, as it would cause extreme hardship to the landowners. The element of interest which would necessarily be claimed for the period of litigation would enhance the interest amount beyond what principal amount has been received by them.

16. Coming to the second issue regarding grant of solatium and

interest @ 6%. A three Judge Bench in '**Union of India Vs. Hari Krishan Khosla**' 1992 (5) JT 574 has held that the provisions of Section 8 (3) (a) of the 1952 Act is not violative of Article 14 of the Constitution of India on account of the fact that there is no provision of solatium and interest and held that failure to provide solatium @ 15% or interest @ 6% would not make it discriminatory. The said view was further followed by a three Judge Bench in **Dayal Singh (supra)** by noticing that the provisions of Section 28A of the Land Acquisition Act, 1894 as such could not be read into the 1952 Act. It was further held that when parties entered into an agreement, the contract can be reopened with the agreement of both the parties. Relevant portion of the judgment passed in **Hari Krishan Khosla (supra)** reads as under:-

“51. We are of the firm view that cases of acquisition of land stand on a different footing than those where such property is subject to a prior requisition before acquisition.

Therefore, the cases relating to acquisition like Vajravelu Mudaliar's case (supra), Balammal's case (supra), Nagpur Improvement Trust case (supra) and Peter's case (supra) are not helpful in deciding the point in issue here. **Goverdhan v. Union of India (Civil Appeal No. 3058 of 1983)**, allowed by this Court on 31.1.83) no doubt was a case of acquisition under the Defence of India Act, 1962 but it contains no discussion. It has already been noticed that the award of solatium is not a must in every case as laid down in Prakash Amichand Shah's case (supra). One more authority requires to be referred to.

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52. We are of the opinion that the amount of compensation

can be fixed by agreement under [Section 8\(1\)\(b\)](#). In the absence of such an agreement it is left to the discretion of the Arbitrator. The Arbitrator under [Section 8\(1\)\(e\)](#) is to hear the dispute. Thereafter he is to determine the compensation which appears to him to be just. He must have regard to the circumstances of each case while applying the provisions of Sub-section (3)(a) of [Section 8](#) which reads as under:

“8 (3): The compensation payable for the acquisition of any property under [Section 7](#) shall be-

(a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b).....”

53. In our view, the significant omission of solatium is indicative of the legislative intent necessitating stress on the expressions "just and circumstances of each case" occurring in sub section (1)(a) thereof.

54. Yet another distinguishing feature is the expression "open market". The reason why solatium has not been provided is that "open market" contemplates a bargain between a free buyer and a free seller unfettered by the consideration of requisition and consequent acquisition.

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58. As a matter of fact in **Hari Narain v. Union of India AIR 1972 Supreme Court 2464 at 2465** the similar acquisition was held to be valid.

59. In the result, we hold that the failure to provide solatium at 15% or interest at 6% under Section 8(3)(a) of the Act does not make it discriminatory.

60. Thus we answer Question No. 1 that Section 8(3)(a) is not, in any way, violative of Article 14.”

17. In such circumstances, this Court is of the opinion that even the grant of solatium alongwith 6% interest was not justified in the facts

and circumstances. Accordingly, the present appeals are allowed to the extent the grant of solatium which was stayed vide interim order is made absolute. However, whatever payment has been made the same will not be recovered by the Union of India.

18. The appeals are partly allowed.

AUGUST 27, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

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