

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

109

CWP-24116-2019

Date of decision: 11.09.2019

Kusum Aggarwal

....Petitioner

Versus

State of Haryana & another

...Respondents

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

Present: Mr.Ajay Jain, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 14.06.2019 (Annexure P-2), passed by the Land Acquisition Collector, whereby redetermination of compensation has been done. Same is in pursuance of the order of the Division Bench passed in **CWP-15184-2004** titled *Smt.Kusum & another Vs. The State of Haryana & others*, dated 24.01.2018 (Annexure P-1). Resultantly, the benefit of the Right to Fair Compensation & Transparency in Land Acquisition Rehabilitation & Re-settlement Act, 2013, has been granted, as such.

The sole question which would arise, firstly, is with regard to the maintainability of the writ petition filed.

It is not disputed that petitioner's land was acquired vide notification dated 17.04.2002 and eventually an award dated 29.04.2003 was passed. Petitioner had challenged the acquisition proceedings in the above writ petition in the year 2004. Eventually the matter was decided and the Division Bench did not quash the proceedings. However, the benefit were granted to assess the compensation under Section 24(1) of the 2013 Act, on the ground that compensation amount was not deposited with the Reference Court as required under Section 31 of the Land Acquisition Act,

1894. Relevant observation reads as under:

“[7] Regardless thereto, it is also admitted that though most of the land owners have received compensation but so far as the petitioners are concerned, they never consented to receive the compensation as assessed by the Land Acquisition Collector. The said compensation was not deposited with the Reference Court also in accordance with Section 31 of the 1894 Act. In this view of the matter and as explained by this Court following catena of Supreme Court decisions in Ghasitu Ram vs State of Haryana and others 2017(3) RCR (Civil) 524, one of the conditions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 stands satisfied and as a result thereto, it can be safely inferred that the impugned acquisition has lapsed qua the petitioners' land. We are, however, of the view that even in a case where the acquisition carried out under the 1894 Act is declared to have lapsed under Section 24(2) of the 2013 Act, the legislative object of 2013 Act is to compensate the expropriate owners with revised and enhanced amount of compensation as may be assessed under the 2013 Act. Such legislative object can be effectively achieved by directing the respondents to assess the compensation under Section 24(1) of the 2013 Act, so that public purpose for which the acquired land has been utilised, remains unaffected and at the same time the petitioners are benefitted with the provisions of the 2013 Act. Ordered accordingly.

[8] The Land Acquisition Collector is, thus, directed to redetermine the compensation amount of the acquired land of the petitioners in accordance with Section 24(1)

of the 2013 Act within a period of four months from the date of receipt of a certified copy of this order and the same be disbursed to them immediately.”

In pursuance of the said directions, the LAC has acted upon and passed the order re-determining the amount of compensation on 14.06.2019 (Annexure P-2), which has now been challenged by filing the present writ petition, seeking further re-determination.

Mr.Jain has vehemently submitted that for the acquisition in question, this Court in **RFA-3102-2008** titled *Jaswant Singh & others Vs. State of Haryana & others*, decided on 15.03.2018 (Annexure P-3), assessed the market value @ Rs.9,22,242/- per acre, for the land falling upto 2 acres from the Rewari-Dharuhera-Delhi Road and @ Rs.7,22,242/- per acre beyond the said distance. It is, thus, submitted that this Court has jurisdiction to re-determine the amount of compensation.

The said argument is not liable to be accepted. Re-determination amounts to passing a fresh award by the LAC under the 2013 Act and any person interested who had not accepted the award, can get the matter referred by the Collector, for re-determination by the Authority, regarding the amount of compensation, who will make reference to the said authority. Section 64 (1) & (2) is para-materia to Section 18 of the earlier Act, and reads as under:

“64. Reference to Authority.—

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is

payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.”

It is, thus, apparent that the petitioner has an alternative and efficacious remedy available to her, but has approached this Court, only on account of the fact that the other landowners had filed appeals against the decision of the Reference Court. Merely because this Court had decided the issue of the market value for the said notification, would not, as such, give a reason to the petitioner not to approach the said Authority.

Keeping in view the provisions of Section 64 and once it is a factual exercise which is to be carried out regarding the market value on

the basis of evidence which is to be led, it is not appropriate for this Court to exercise its extraordinary jurisdiction, for re-determination, at the first instance. It is a settled principle that jurisdiction under Articles 226/227 of the Constitution of India is not to be exercised where there is an alternative and efficacious remedy, in view of the law laid down by the Apex Court in ***United Bank of India Vs. Satyawati Tondon and others, 2010 (8) SCC 110*** which reads as under:

“44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.”

Resultantly, keeping in view the above, the present writ petition is dismissed being not maintainable. However, in view of the above-said observations, petitioner will be at liberty to approach the

appropriate forum/Authority, in accordance with law. In case the said request for reference is made within a period of one week, the Collector would keep in mind that the writ petition was filed on 31.08.2019 and therefore, limitation shall, accordingly, be commuted, as per Section 64 (2).

11.09.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: Yes/No