

CWP-9863-2021 (O&M)
and connected cases **1**

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

1. CWP-9863-2021 (O&M)

Baldev Singh and others
....Petitioners

Versus

The Amritsar Improvement Trust and others
..Respondents

2. CWP-9865-2021 (O&M)

Harbhajan Kaur and others
....Petitioners

Versus

The Amritsar Improvement Trust and others
..Respondents

3. CWP-9867-2021 (O&M)

Nirvair Singh
....Petitioner

Versus

The Amritsar Improvement Trust and others
..Respondents

4. CWP-9899-2021 (O&M)

Tajinder Singh and another
....Petitioners

Versus

The Amritsar Improvement Trust and others
..Respondents

5. CWP-9910-2021 (O&M)

Ajit Singh

....Petitioner

Versus

The Amritsar Improvement Trust and others

..Respondents

Date of decision:24.08.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Tarundeep Kumar, Advocate for
Mr. D.S.Pheruman, Advocate for the petitioners

Mr. Kushagra Mahajan, Advocate for respondent no.1

Ms. Sunint Kaur, AAG, Punjab

ANIL KSHETARPAL, J

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

By this order, five Civil Writ Petitions i.e CWP-9863-2021, CWP-9865-2021, CWP-9867-2021, CWP-9899-2021 and CWP-9910-2021, shall stand disposed of.

Learned counsel representing the petitioners has submitted that in all these writs, an identical question has arisen for adjudication. A perusal of the pleadings also establishes in particular that the facts in all the cases are identical.

The issue which arises for determination is whether benefits under Section 28-A of the Land Acquisition Act, 1894, (hereinafter referred to as the '1894 Act') are available in the acquisition of land under the Punjab Town Improvement Act, 1922 (hereinafter referred to

as the '1922 Act').

Some peculiar facts are required to be noticed. The Amritsar Improvement Trust prepared a 340 acre development scheme with respect to the land located on Amritsar-Jalandhar GT Road. In order to acquire the land, a notification under Section 36 of the 1922 Act was issued on 06.10.1995 whereas declaration under Section 41 was published on 17.01.1996. The Land Acquisition Collector passed the award on 16.01.1998. At that time, all the writ petitioners did not apply for the reference to the Land Acquisition Tribunal under Section 54 of 1922 Act for re-determination of the compensation on 22.07.2019. The petitioners are stated to have applied to the Land Acquisition Collector under Section 28-A of the 1894 Act on the basis of the award passed on 04.05.2019 by the Land Acquisition Tribunal. The Tribunal has enhanced the amount of compensation for acquisition of the land.

Learned counsel representing the petitioners contends that the Collector has erred in not entertaining the application and accordingly, order the release of the enhanced compensation under Section 28-A of 1894 Act and therefore, the writ of Mandamus is required to be issued, directing the Collector to send the reference.

On 28.06.2021, when the writ petitions were listed for preliminary hearing, learned counsel representing the petitioners was requested to examine as to whether of Section 28-A of the 1894 Act is applicable to the acquisition of the land under the 1922 Act?

Thereafter, the writ petitions were taken up on 18.08.2021. The counsel for the petitioner contends that for the land

acquired under the 1922 Act, the benefits of 1894 Act are required to be given. He, in support thereof, relies upon the judgments passed by two Division Benches in '**Jalandhar Improvement Trust vs. Daljinder Singh**' 1992 PLJ 520 and **Dalbir Singh Dhindsa and others vs. State of Punjab and others** 2013 (2) PLJ 104.

Before proceeding to analyze the arguments of the learned counsel, it is important to note that the 1922 Act was enacted after the enactment of the 1894 Act. A careful reading of Section 59 of the 1922 Act would show that for the purpose of acquiring land under the 1894 Act for the Trust, the modification listed in Section 59 is applicable which is extracted as under:-

“59. Modification of the Land Acquisition Act, 1894. - For the purpose of acquiring land under the Land Acquisition Act, 1894, for the trust -

(a) the tribunal shall (except for the purposes of section 54 of the said Act) be deemed to be the Court, and the president of the tribunal shall be deemed to be the Judge, under the said Act;

(b) the said Act shall be subject to the further modifications indicated in the Schedule to this Act;

(c) the president of the tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 [5 of 1908]; and

(d) the award of a tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894 [1 of 1894] and shall be final.”

Clause (b) of Section 59 refers to the Schedule. On a thorough reading of the schedule attached to the 1922 Act, it is observed that Section 28-A has not been made applicable where the acquisition of

the immovable property takes place under the 1894 Act, for the Trust.

Moreover, it is apparent that the 1922 Act is not merely enacted for the acquisition of land. It is not only a expropriatory legislation but in fact, this Act was enacted for improvement and expansion of the towns in the State of Punjab, after obtaining the previous sanction of the Governor-General under Section 80-A(3) of the Government of India Act, 1935. This Act can trace its origin from entry 5 of List II of the 7th Schedule whereas the origin of 1894 Act can be traced to entry 42 of List III of the 7th Schedule. The primary object of the 1922 Act is the planned development of the towns. The attention of the Court has not been drawn to any provision which provides that the 1894 Act shall be universally and completely applicable to the acquisitions under the 1922 Act. It is apparent from the reading of the Section 59, which has been extracted above, that the provisions of the the 1894 Act, for the acquisition of land for purpose of Trust, have been made applicable to only a limited extent. The nexus between both the acts cannot be widened by disregarding the legislative intent of both the Acts.

Furthermore, while examining the time limit prescribed under Section 11-A of the 1894 Act in the context of Maharashtra Monopolistic and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the 'MRTP Act'), a Five Judge Bench in '**Girnar Traders vs. State of Maharashtra (2011) 3 SCC 1**' held that the doctrine of 'legislation by reference' could not be invoked in such situation. While deciding the question with regard to different time frames for

announcing the awards and consequences of default thereof, the Court held that such provisions cannot be read into an acquisition controlled in accordance with the Chapter VII of the MRTP Act.

Now let us examine the judgments relied upon by the learned counsel for the petitioners. In the first judgment, the Division Bench while examining the provisions of 1922 Act and the 1894 Act held that the claimants are entitled to an additional compensation under Section 23 (1-A) of the 1894 Act. The Division Bench while relying upon the judgment passed by the Supreme Court in **Nagpur Improvement Trust vs. Vithal Rao and others AIR 1973 SC 689** held that for the purpose of determination of the amount of compensation, it is immaterial whether the acquisition of the land is under one act or another act dealing with acquisition. Recently, the Hon'ble Supreme Court in **UOI vs. Tarsem Singh and others (2019) 9 SCC 304** has also held that the amount of compensation is required to be determined on the parameters laid down in the 1894 Act. While upholding the judgment passed by the Division Bench in **Golden Iron and Steel forging vs. UOI (2008) SCC Online (P&H) 498**, the Supreme court held that Section 3J of the National Highway Act, 1956 is ultra vires to the Constitution of India and therefore, has been declared to be inoperative. However, in the abovementioned case, the Hon'ble Supreme Court limited the benefit of the 1894 Act only on a determination of the amount of compensation and interest under various provisions of the National Highways Act, 1956.

However, in the present case, the petitioners are praying for

another opportunity to apply for enhancement of compensation by claiming parity. Section 28-A of the 1894 Act gives another opportunity to the owners to apply again, if they have missed the first opportunity to apply for re-determination of the amount of compensation under Section 18. However, learned counsel representing the petitioners failed to draw attention of the Court to any provision of 1922 Act or the Schedule extending the benefit of Section 28-A of the 1894 Act to the owners of the land under the 1922 Act. Hence, the judgment has no application to the facts of the present case.

The next judgment relied upon by the counsel is in Dalbir Singh Dhindsa (supra). In this case, the Division Bench held that while determining the amount of compensation under the 1922 Act, the provisions of Section 23(2) and 28 of the 1894 Act shall be applicable. Section 23(2) is with regard to the amount of solatium on the market value whereas Section 28 provides for payment of interest on excess compensation, if there is delay in payment of the amount. Section 23(2) and Section 28 are a part of the same scheme of determining the amount of compensation, hence, both the judgments do not advance the case of the petitioners. In the considered opinion of this Bench, the 1922 Act is a complete Code and the Legislature wherever intended has made a reference to the 1894 Act. Once the intention of the Legislature is clear, the Court cannot extend the benefit beyond what has been expressly provided by the Legislature. In these circumstances, unless intended, the benefits under Section 28-A of the 1894 Act cannot be read into the 1922 Act.

A plain language of Section 28-A of the 1894 Act shows that a special provision for re-determination of compensation has been inserted by way of an amendment in the 1894 Act in order to provide for another opportunity to the land owners, who failed to avail the remedy under Section 18. Thus, Section 28-A is a special provision, which would not ipso facto be applicable to the 1922 Act, unless the same is specifically made applicable to the given statute or is adopted. On detailed reading of the various judgments passed in Jalandhar Improvement Trust (supra), Dalbir Singh Dhindsa (supra), Tarsem Singh (supra) and Golden Iron and Steel Forgings (supra), it is observed that the Supreme Court has held that the provisions of compensation and payment for the compulsory acquisition of land is in the domain of the Courts and therefore, efforts should be made to assess the compensation for the compulsory acquisition of the land while adopting a uniform method of assessment. However, a special provision of providing an additional opportunity to claim enhanced compensation would not ipso facto be applicable to the acquisition of land under different and independent statutes, which are complete Code in themselves.

The Hon'ble Supreme Court in the context of applicability of Section 28-A of the 1894 Act to the acquisition of land under the Requisitioning and Acquisition of Immovable Property Act, 1958 has laid down that the provisions of Section 28-A of the 1894 Act are not applicable unless specifically extended or made applicable. Reliance in this regard can be placed on judgments in '**Dayal Singh and others vs. Union of India and others**' (2003) 2 SCC 593 and '**Union of India vs.**

Gurbachan Singh and others' 1995(1) SCC 292.

In view of the aforesaid discussion, finding no merit, the writ petitions are dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

24.08.2021
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE