

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

CR-7663-2017 (O&M)
Date of decision: 02.12.2022

Hoshiar Singh and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mrs. Pratibha Yadav, Advocate, for petitioners.

Mr. Deepak Balyan, Addl. Advocate General, Haryana,
for respondents No.1 & 2.

Mr. Sudeep Mahajan, Advocate, and
Ms. Saachi Mahajan, Advocate, for respondents No.3 & 4.

ARUN PALLI, J. (Oral)

The claimant-landowners are in revision against an order dated 30.10.2017, passed by Additional District Judge, Gurugram, vide which the application moved by the beneficiary of the acquisition (**HSI IDC**) to adduce additional evidence has since been allowed.

A brief narration of facts that have led the parties to the current stage, shall be expedient.

Pursuant to the notification dated 11.01.2005, issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), a land measuring 799 kanals 01 marla, including the land holding of the petitioners, was acquired by the State Government. Vide award No.15, dated 10.05.2006, rendered by the Land Acquisition Collector, value of the acquired land was assessed @ Rs.12.5 lakh per acre. Being dissatisfied with the assessment as also the compensation awarded by the Collector, the petitioner-landowners filed objections under Section 18 of the Act.

However, the Reference Court, vide award dated 13.11.2013, rejected their claim as the objections filed by them, under Section 18, were held to be time-barred. Accordingly, they preferred an appeal before this Court (RFA-9711-2014). And, upon consideration of the matter, this Court, vide order and judgment dated 08.08.2017, set aside the award (*ibid*), and remitted the matter to the Reference Court for re-decision:

“In the affidavits placed on record by the appellants, namely, Hoshiar Singh, Rajinder and Rajesh, vide CM-3901-CI-2017, it is affirmed that the deponents were serving in the Army and were on duty when the Collector rendered the award. In fact, Rajinder was posted at that time at 16 Corps, CRC, Nagrota C/o 56 A.P.O.(J&K) and Rajesh was posted at 64 Bn., BSF Dholchera, C/o 99 A.P.O. On being pointedly asked, learned State Counsel could not point out from the record if any of the claimant-land owners was either present or represented before the Collector on 10.05.2006. Thus, in the given situation, the statement of Hoshiar Singh (PW1) towards conclusion of his cross-examination that “My younger brother Rajender was present at the time of announcement of the award.” prima facie appears to be an accidental error or omission. And, even as regards his statement “It is correct that my brother Rajender and brother in law Rao Chunni Lal Advocate informed me about the same at that time.” could at best be construed to mean that he acquired knowledge qua the award dated 10.05.2006 from his brother and brother in law. Of course, it could never be read to mean that they were present on 10.05.2006. The position of law is well settled that “period of six months”, envisaged in clause (b) sub-section 2 of Section 18, means six months from the date of actual or constructive knowledge of the award made by the Collector. Except the statement of Hoshiar Singh (PW1), as referred to above, nothing could be shown that the award, dated 10.05.2006, was indeed in actual or constructive

knowledge of the claimants. This is not the case of the State either that the claimant-land owners were served with notice under Section 12(2) of the Act. Faced the situation, learned counsel for the parties submit that let the matter be remitted to the Reference Court for a decision afresh.

Accordingly, the impugned award dated 13.11.2013 is set aside and the matter is remitted to the Reference Court for re-decision. The parties through respective counsel shall appear before the District Judge, Gurgaon on 21.08.2017. It shall be the discretion of the District Judge to either decide the matter himself or assign to any other court of competent jurisdiction. Needless to assert, this order shall not constitute any expression of opinion on merits of the case of either party. And the Reference Court shall decide the same strictly in accordance with law and on the basis of evidence on record.”

Post remand, the beneficiary of the acquisition (HSI IDC) moved an application dated 26.10.2017, to produce/tender in evidence the **APR (receipts of the awarded amount)** and examine the concerned official to prove that petitioner-landowners, namely, Rajesh and Omwati Devi had received the awarded compensation on 02.06.2006. Whereas, Hoshier Singh and Rajender had received the compensation on 04.09.2006 & 06.11.2006, from the office of Land Acquisition Collector, Gurugram. Thus, the objections filed by them on 20.12.2006, under Section 18, were hopelessly barred by limitation. The petitioner-landowners opposed the said application. However, the Reference Court, vide impugned order dated 30.10.2017, allowed the application moved by the respondent-authorities and it was permitted to adduce the proposed evidence.

Learned counsel for the petitioner-landowners submits that apparently the respondents have been remiss and negligent in pursuing their

cause. She asserts that this was not a case where the proposed evidence was not in existence or was not in notice/knowledge of the authorities despite due diligence. Therefore, if despite having been afforded ample opportunities to lead and conclude evidence, the respondent-authorities failed to tender the documents that are now sought to be proved, the Reference Court ought to have declined the prayer of the respondents. Further, in reference to the order and judgment dated 08.08.2017 (**ibid**), she submits that while remitting the matter, this Court had specifically observed that the Reference Court would decide the matter on the basis of the evidence on record and, thus, no such application could be moved by the respondent-authorities, least be entertained and accepted by the Reference Court.

As against this, learned counsel for respondents No.3 & 4 submits that since the documents that are sought to be tendered in evidence are crucial and form part of the official record, the Reference Court has rightly exercised its jurisdiction to grant the prayer of the authorities to adduce additional evidence. It is urged that the matter was disposed of on 08.08.2017, and without any further delay, the application to adduce additional evidence was moved on 26.10.2017. Further, he submits that the observations recorded by this Court in its order (**ibid**) were that the Court shall decide the reference strictly in accordance with law and on the basis of the evidence on record. Which, could not be construed to mean that the matter was to be decided only on the **basis of the evidence already on record**.

I have heard learned counsel for the parties and perused the record.

Concededly, the Land Acquisition Collector had rendered the award on 10.05.2006. It is not in dispute either that the objections filed by the petitioners-landowners on 20.12.2006, under Section 18, were dismissed, being time barred, by the Reference Court, vide award dated 13.11.2013. It would be apposite to point out here that the Reference Court had framed the issues on 24.10.2011. Whereafter, the petitioner-landowners led and closed their evidence on 26.03.2013. Likewise, even the respondent-authorities closed their evidence on 27.05.2013. However, subsequently, the Reference Court, on analysis of the pleadings of the parties, and being of the view that as the issue: **whether the objections, filed under Section 18, by the petitioner-landowners were time barred or within limitation, directly arises for consideration, framed a specific issue (additional issue No.2) in this regard on 08.11.2013.** Accordingly, as is discernible from the impugned order (**ibid**), the Reference Court heard the argument on 08.11.2013 itself, and pronounced the award on 13.11.2013. Thus, the respondent-authorities never had any occasion to adduce any specific evidence qua additional issue No.2. Though, in normal parlance, a Court upon framing an additional issue, in all probabilities, would afford adequate opportunity to the parties to adduce their respective evidence on the said issue. But, as indicated above, in the matter at hands, the Reference Court immediately upon framing additional issue No.2, heard the parties and reserved the matter for award. The award dated 13.11.2013 was set aside by this Court on 08.08.2017, and the matter was remitted to the Reference Court for re-decision. And, soon thereafter, the respondent-authorities moved an application on 26.10.2017 to adduce additional evidence. Thus, the respondent-authorities could not, in the given circumstances, be accused

of being negligent or despite adequate opportunity having been afforded failed to lead evidence.

Further, what is sought to be brought on record by way of additional evidence is the **APR (receipts of the awarded amount)** to prove that the petitioner-landowners having received the compensation on 02.06.2006, 04.09.2006 & 06.11.2006, the objections filed by them under Section 18 on 20.12.2006, were barred by limitation. Apparently, the documents that are sought to be tendered in evidence form part of an official record and would have a decisive bearing on the matter. The photocopies of the said documents were appended with the application moved by the respondent-authorities. Apparently, the proposed evidence is crucial in nature and would enable the Court to arrive at a just and fair decision in the matter.

The argument that the Reference Court seriously erred in granting the prayer of the respondent-authorities, as this Court in its order and judgment dated 08.08.2017 had specifically observed: “***And the Reference Court shall decide the same strictly in accordance with law and on the basis of evidence on record.***”, also lacks conviction and cannot be countenanced. Ex facie, the purport and intent of the observations recorded by this Court, as the matter was being remitted for re-decision, was to ensure that the evidence which had already been led and recorded was not struck off the record, requiring the parties to lead evidence *de novo*. But it could not, by any stretch of imagination, be construed to mean that notwithstanding anything, the parties were not permitted to move any application or even an application to adduce additional evidence, no matter how important or crucial the proposed evidence would be. Further, if the law entitles the

parties to move any such application, to prove their respective claims, the said right could not be curtailed or foreclosed by a judicial order. And, in any case, no such order/direction, restraining the rights of the parties, was passed by this Court either.

That being so, no ground is made out to interfere with the impugned order passed by the learned Reference Court. The petition being bereft of merit is, accordingly, dismissed.

At this stage, learned counsel for the petitioner-landowners submits that once the respondent-authorities lead additional evidence, the petitioner-landowners too would have a right to lead evidence in rebuttal. This Court is sanguine that once the respondents adduce the proposed evidence, the Reference Court would afford adequate opportunity to them to lead evidence, if any, in rebuttal.

(Arun Palli)
Judge

02.12.2022

Rajan

Whether speaking / reasoned:
Whether Reportable:

YES/NO
YES/NO