

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

LPA No. 591-2019

DECIDED ON: MARCH 15th, 2022

MADAN MOHAN MEHRA AND OTHERS

.....APPELLANTS

VERSUS

THE AMRITSAR IMPROVEMENT TRUST, AMRITSAR & ORS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.
HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present: Mr. Karan Nehra, Advocate
for the appellants.

SANDEEP MOUDGIL, J

Challenge in the present Intra Court Appeal is to the order dated 17th January, 2019 passed by learned Single Judge in CM-4642-CWP-2017 in CWP-21635-2010, wherein, application under Order 6 Rule 17 of the Code of Civil Procedure 1908 read with Article 226 of the Constitution of India seeking quashing of the notification dated September 10th, 1971 and the consequent award dated March 19th, 1979 passed by the Land Acquisition Collector, Amritsar Improvement Trust as also the award dated March 31st, 2019 passed by Land Acquisition Tribunal, has been dismissed being totally misconceived.

Two questions of law have arisen before this Court; firstly whether the amendment can be entertained at such a belated stage after 38 years; secondly whether the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act of 2013), would apply for the purpose of assessing compensation.

It is, however, imperative to have a glance on the brief factual matrix involved in the main petition as well, before adjudicating the question as to whether the amendment in the main petition i.e. CWP-21635-2010 can be allowed for the reasons mentioned in the said application.

A perusal of the record depicts that the appellants/petitioners initially approached this Court seeking quashing/modification of the award dated March 31st, 2009, passed by Land Acquisition Tribunal and for enhancing the compensation of the land in consequence thereof. The said land was acquired vide notification dated September 10th, 1971 issued under Section 36 of the Punjab Town Improvement Act,1922 by the Amritsar Improvement Trust, Amritsar, for development of residential and commercial areas.

The appellants/petitioners are alleged to be the owners in possession of the land measuring 237 kanals,1 Marla comprised in the revenue Estate of Village Kot Khalsa, Tehsil and District Amritsar. However, the Government of Punjab proceeded to acquire the land measuring 97.5 acres, in pursuance of the afore-said notification. The compensation awarded by the Land Acquisition Collector, Amritsar Improvement Trust, Amritsar vide award dated March 19th, 1979, is reflected in the following table:-

S.No	Particulars	Compensation awarded (Rs.)
1.	Compensation for the land measuring 133 kanals 10 marlas (Belt-A) @ Rs.192/- per marla	5,12,640/-
2.	Compensation for low lying land measuring 23 kanals 15 marlas @ Rs.96/- per marla.	45,600/-
3.	Compensation for land measuring 32 kanals 17 marlas (Belt-B) @ Rs.76/- per marla.	1,15,632/-
4.	Compensation of low lying land measuring 9 kanals 3 marlas @ Rs.88/- per marla.	16,104/-
5.	Compensation for the land measuring 76 kanals 17 marlas (Belt-C) @ Rs.160/- per marla	2,45,920/-
6.	Compensation of low lying land measuring 218 kanals 14 marlas @ Rs.96/- per marla.	4,10,304/-
7.	Compensation for trees	82/-

8.	Compensation for wells/tubewells	2400/-
9.	Compensation for standing structures	51,219/-
10.	Compensation for loss of business and shifting charges etc.	7250/-
11.	Compensation for compulsory acquisition @ 15% for the land structure i.e. only on an amount of Rs.13,97,419/-	2,09,612.85/-
	Total	16,16,762.85/-

Being dis-satisfied with the said award, Reference under Section 18 of the Land Acquisition Act, 1894 read with Section 58 of the Punjab Town Improvement Act, 1922 was raised, which was partly allowed vide award dated March 31st, 2009.

The afore-said award has been put to challenge before learned Single Judge by way of filing CWP-21635-2010, which stands admitted on July 12th, 2011.

It is, during the pendency of the writ petition, an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 was filed for quashing of the notification dated September 10th, 1971 as well as award dated March 19th, 1979 passed by the Land Acquisition Collector, Improvement Trust, Amritsar. The said application was dismissed by learned Single Judge vide order dated January 17th, 2019 against which the present Letters Patent Appeal has been preferred before this Court.

The appellants have sought two amendments firstly, that since adequate and appropriate compensation has not been awarded to the appellants and there is complete violation of Article 31 (prior to deletion of the provision) and Article 300-A of the Constitution of India, therefore, the notification dated September 10th, 1971 be quashed and secondly to re-determine the compensation payable to the appellants as per the present market value by adopting the procedure as envisaged under Section 24 of the Act of 2013.

amendments have been made in law, the Act of 2013 has been notified after repealing the Land Acquisition Act, 1894.

It is pertinent to take note of the fact that Award dated March 19th, 1979 passed by Land Acquisition Collector, Amritsar Improvement Trust, Amritsar was accepted and after having contested the matter before the Tribunal in Reference upto the year 2009, the acquisition proceedings were never challenged since the date of issuance of notification is September 10th, 1971 for acquisition. Now under the garb of application under Order 6 Rule 17 of the Code of Civil Procedure, 1908, the original prayer clause is sought to be amended with an addition to challenge the notification dated September 10th, 1971 and also seeking quashing of award dated March 19th, 1979 with an alternative prayer to assess the amount of compensation at the market value. Such prayer to seek amendment at this stage, is totally mis-directed and misleading, inasmuch as, re-determination of amount of compensation has already been sought in the writ petition at the rate not less than the market value of the land.

Another material aspect is that the acquisition proceedings stood concluded in the year 1979 which leaves no doubt to the mind of this Court that question of applicability of Act of 2013 does not arise in any manner whatsoever.

We deem it necessary prior to examine the question involved herein, to refer to the provisions of Order 6 Rule 17 of the Code of Civil Procedure, 1908, which reads as under:-

“17. Amendment of pleadings:- This Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties;

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the

conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

A bare reading of the afore-said provisions crystalize that amendment necessary for the purpose of determining the real questions between the parties may be allowed with the proviso envisaging that no such application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

The record shows that the writ petition was preferred *inter-alia* seeking quashing/amendment of the award dated March 31st, 2009 and for enhancing the compensation of the land which stands admitted on July 12th, 2011. The appellants have accepted the award in the year 1979 and after contesting the matter before the Tribunal from 1985 to 2009, the acquisition itself is sought to be challenged now. The real controversy was the determination of market value which is the subject matter in the writ petition whereas by virtue of instant application under Order 6 Rule 17 of the Code of Civil Procedure, 1908, now the challenge is sought to the acquisition proceedings itself after more than 35 years.

From the perusal of application under Order 6 Rule 17 of the Code of Civil Procedure, 1908, it is evident that now the amendment is actually sought to the relief clause which is totally contrary to the main plea and the relief claimed in the writ petition itself.

In the case in hand, it is to be tested under the proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908 in the light of the fact that as to whether the appellant acted with due diligence or not. The intent of Legislation and the entire object of the sought amendment is now contrary to each other, inasmuch as the acquisition in question was for planned

development of Amritsar town, which is now sought to be scuttled. The appellants have failed to show that they could not raise the matter in spite of due diligence at the first instance in the light of admitted fact that the acquisition process stood completed in the year 1979 itself and thereafter, in Reference remained in litigation till 2009 where the acquisition was never put to question. Even at the time of filing of the writ petition the prime issue raised is qua the determination of market value by applying the procedure under the Act of 2013.

We are, in view of the discussions made hereinabove and perusal of record, of the considered opinion that it is merely a clever device adopted by the appellants which needs to be discouraged to check the misuse of process of law.

As far as the question of applying the provision of the Act 2013 is concerned, the date of acquisition in the present case is very material which stood concluded in the year 1979 itself and at such belated stage the argument raised by the counsel for the appellants in this regard lacks merit, being without any basis and hence is rejected.

In view of discussion made hereinabove, this Court does not find any reason to interfere with the order dated January 17th, 2019 passed by learned Single Judge.

Hence, the present appeal is dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANDEEP MOUDGIL)
JUDGE

MARCH 15th, 2022
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>