

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

**LPA-101-2023 (O&M)
Decided on :02.02.2023**

Eros City Developers Pvt. Ltd.Appellant(s)

Versus

State of Haryana & othersRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Aashish Chopra, Sr.Advocate
With Ms.Rupa Pathania, Advocate for the appellants.

Mr.Ankur Mittal, Addl.A.G., Haryana
and Mr.Saurabh Mago, AAG, Haryana, for respondents No.1 & 2.

Mr.Ankur Mittal, Advocate
and Ms.Kushaldeep K.Manchanda, Advocate
for respondent No.3-HSVP.

G.S. Sandhawalia, J.

CM-320-LPA-2023

Allowed, as prayed for.

CM stands disposed of.

CM-321-LPA-2023

Notice in the application for condonation of delay of 5 days
in filing the appeal.

Mr.Ankur Mittal, Addl.A.G., Haryana and Mr.Saurabh Mago,
AAG, Haryana accepts notice.

Keeping in view the nominal delay and for the reasons given
in the application, sufficient cause has been made out to condone the delay
of 5 days in filing the appeal, which is hereby condoned.

CM stands disposed of.

LPA-101-2023

The consideration in the present Letters Patent Appeal is to the order of the learned Single Judge whereby CWP-1906-2021 titled *Eros City Developers Pvt. Ltd. Vs. State of Haryana & others*, filed by the present appellant, which was dismissed on 01.12.2022 by giving liberty to the appellant to apply to the Land Acquisition Collector for availing the remedy wherein compensation was sought along with interest under the Right to Fair Compensation & Transparency in Land Acquisition Rehabilitation & Resettlement Act, 2013 (for short, the '2013 Act'). Challenge had also been made to the order dated 15.12.2020 (Annexure P-1) passed by the District Revenue Officer. The reasoning given by the learned Single Judge was regarding the proposition claimed for compensation under the 2013 Act on the ground that it was required to be assessed by the Reference Court or by the authority constituted by the 2013 Act and an application was required to be made to the Land Acquisition Collector within the time prescribed and therefore, the said liberty was given.

2. Senior Counsel for the appellant has also brought to our notice that during the pendency of the writ petition, interim directions were issued on 27.04.2021 which had led to the passing of the order dated 25.02.2022 (Annexure R-2) wherein the District Revenue Officer-cum-Land Acquisition Collector had rejected the right of the appellant to claim compensation as granted to other similarly situated landowners on the ground that the said landowners had availed their right for enhanced compensation. Therefore, the claim of the appellant was held to be time-barred as neither any application under Section 18 of the Land Acquisition Act, 1894 (for short, the 'Act') had been filed nor any application for

redetermination of compensation under Section 28-A had been preferred within the limitation period.

3. It is, accordingly, contended that the said order which was passed by the authorities was not even examined by the learned Single Judge and therefore, the valuable rights of the appellant have been taken away. It is further contended that a question of law was arising which should have been considered by the learned Single Judge and without deciding the issue which had cropped up, the matter could not have been relegated to the alternate remedy. The authorities had already opined upon the said dispute and rejected the claim qua the admissibility of the compensation at the rate similarly situated landowners had been granted by the Reference Court and even modified by the order of this Court. Thus, it is submitted that in the absence of reasons, various issues which had been urged and raised by the appellant had not even been taken into account leave alone a finding on the same and therefore, the said order was challenged on that basis by placing reliance upon **State of Uttarakhand & another Vs. Mayan Pal Singh Verma, 2022 SCC Online SC 469**.

4. Mr. Ankur Mittal, having advance copy, is present in Court and also assisted the Court.

5. We are also of the considered opinion that the matter would require a deeper scrutiny than what has been noticed by the learned Single Judge as the valuable rights of the appellant are also involved regarding the market value of the acquired land.

6. The brief facts which are to be noted in order to appreciate the controversy in question is that notification dated 08.10.2003 were issued under Section 4 (Annexure P-3) for the public purpose for the

expansion and systematic development of the tourist complex, Surajkund Village Lakarpur, Tehsil and District Faridabad wherein 172 kanals 19 marlas was sought to be acquired and the same was followed up by under Section 6 notification on 07.05.2004 (Annexure P-4). The same was subject matter of challenge by the appellant in CWP-10611-2004 titled *Eros City Developers Pvt. Ltd. Vs. State of Haryana & others* and dispossession was stayed vide interim order dated 20.07.2004 (Annexure P-5). Thereafter, award No.12 was passed on 05.05.2006 (Annexure P-6) of 169 kanals 9 marlas. The writ petition of the appellant was allowed on 21.01.2008 (Annexure P-7) principally on the ground that permission for change of land use had already been granted for the same purpose. State of Haryana preferred SLP(Civil) No.7553 of 2008 titled *State of Haryana Vs. Eros City Developers Pvt. Ltd. & others* in which interim order was passed on 21.04.2008 (Annexure P-8) and the appellant was restrained from transferring, alienating or parting with possession of the property in question and from making any construction on the land. Eventually CA-354-2016 arising out of the said SLP was allowed and the order passed by Co-ordinate Bench was set aside upholding the said acquisition on 19.01.2016 (Annexure P-12).

7. It is admitted case that possession was taken and the appellant claimed that it was done on 26.01.2016 in violation of the due procedure of law on a national holiday, though they had filed the writ petition before this Court keeping in view the provisions of the 2013 Act and wanting to take the benefit of lapsing. CWP-4803-2016 accordingly came to be dismissed on 24.08.2020 (Annexure P-14) by holding that the petitioners having failed in an earlier challenge could not reopen the same under the 2013 Act and the status quo order if any stood vacated. Thereafter on

30.09.2020 (Annexure P-15), a review application was filed to approach the concerned DRO-cum-LAC for release of compensation which was left open provided the application was filed within a period of 4 weeks. The same order reads as under:

“RA-CW-204-2020 in CWP No. 4803 of 2018

2. Having heard learned Mr. Harish Malhotra, learned Senior Counsel for the Review Applicants/Petitioners and Mr. Ankur Mittal, Additional Advocate General, Haryana, the Court modifies the order dated 24th August, 2020 in CWP No. 4803 of 2016 only to the extent of clarifying that it will be open to the Review Applicants/Petitioners to approach the concerned District Revenue Officer-cum-Land Acquisition Collector (DRO/LAC) for release of the compensation, which the Review Applicants/Petitioners claim is due to them. If such application is filed by the Review Applicants/Petitioners within a period of four weeks from today, it will be examined and disposed of in accordance with law by the DRO/LAC within a further period of 8 weeks thereafter.

3. The review application is disposed of in the above terms.”

8. The same had to be accordingly examined and disposed of in accordance with law by the said officer within a period of 8 weeks thereafter. The necessary application was made on 14.10.2020 (Annexure P-16) wherein the claim was made of Rs.3,48,65,26,400/- against the deposit of Rs.6,47,79,199/- that tendering of the compensation made under the 2013 Act had not been done which was the liability of the State which was deposited with the bank regarding which the State had also issued notice on 22.10.2020 (Annexure P-18) to receive the said amount.

9. Other landowners in the meantime had filed reference petitions under Section 18 of the Act for enhancement of the compensation as the market value had been assessed at Rs.25,00,000/- per acre by the LAC vide award dated 05.05.2006 (Annexure P-6). The market value was

accordingly assessed at Rs.1300/- per sq.yards (Rs.62,92,000/- per acre)

vide order dated 08.02.2017 (Annexure P-17) by the Addl.District Judge, Faridabad. The DRO eventually vide the order dated 15.12.2020 rejected the claim for payment of compensation in accordance with the provisions of the new Act by coming to the conclusion that compensation was offered to the applicants by the DRO on 16.05.2006 but the said landowners had gone into litigation and the amount was to be paid by submitting the requisite documents like bank account details, identity proof and ownership proof etc. Resultantly, the writ petition came to be filed challenging the said order wherein alternate prayer was made seeking a right to fair compensation under the 2013 Act regarding the land measuring 109 kanals 14 marlas which the company claims to own and in the alternate sought enhancement of compensation as granted to the other landowners as per the Reference Court order dated 08.02.2017 (Annexure P-17).

10. CM-9908-2022 came to be filed in the writ petition claiming payment of statutory benefits and seeking compensation in terms of the interim order dated 11.05.2018 passed by this Court in RFA-2872-2017 titled *State of Haryana & another Vs. Municipal Corporation, Faridabad*. The same had been preferred by the State against the order of the Reference Court wherein vide interim order when the appeals filed by the State had come up it had been directed to deposit compensation @ Rs.1000/- per sq.yard along with all statutory benefits with the Executing Court and the amount awarded over and above that had been stayed. On 27.04.2021, the learned Single Judge passed the order for examining the issue of interim compensation at Rs.1000/- per sq.yards. The operative part of the order reads as under:

“In the meantime, the respondents are directed to examine the case of the petitioner for grant of same/similar relief as granted vide order dated 11.05.2018. The respondents are directed to consider the case for the aforementioned relief in accordance with law, within a period of two months from the date of receipt of certified copy of this order.

Liberty is also granted to both the parties to move an application, in case, the facts in the present case warrant any further directions.”

11. Eventually the impugned order dated 25.02.2022 (Annexure R-2) came to be passed wherein the claim for the amount as granted to other landowners were held to be time-barred on various grounds including the issue of limitation and by noticing that no application under Section 18 of the Act had been filed nor any application for redetermination under Section 28-A of the Act was filed. The claim for higher compensation under the 2013 Act was also rejected by noticing that on an earlier occasion, the offer had been made on 16.05.2006 and the amount had not been received and thereafter an order had been passed on 15.12.2020. Thus, effectively the LAC determined the issue on both the aspects, the right to claim compensation under the 2013 Act and the right to receive compensation as granted to similar landowners for the same acquisition.

12. On merits, the said issues were never addressed by the learned Single Judge who in his wisdom never discussed the orders dated 15.12.2020 and the subsequent order dated 25.02.2022. The learned Single Judge held that the market value is required to be assessed either by the Reference Court or by the authorities constituted under the 2013 Act while failing to notice that the LAC had declined the said claim but relegated the appellant to the statutory remedy.

13. The above-said background and the fact that the landowners had been claiming two separate reliefs and both had been rejected by the DRO-cum-LAC were thus to be considered by the Writ Court. Reliance has been placed upon the first proviso of Section 24(2) of the 2013 Act to contend that where an award has been made and compensation in support of majority of landowners had not been deposited in the account of the beneficiaries, they shall be entitled to the compensation in accordance with the provisions of the 2013 Act. It would also be an issue as to whether the second proviso which has now been incorporated by the State of Haryana that the period during which the proceedings for acquisition of land had been held up on a stay and injunction by the Court are liable to be excluded. The said section reads as under:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the

appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

Provided further that in computing the period referred to in this sub-section, any period during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by order of any court, shall be excluded:

Provided further that the entry in rapat roznamcha regarding taking or handing over possession recorded by the Land Acquisition Officer or Revenue Officer shall be treated as possession taken for all intents and purposes. "

14. As noticed above, there was an initial order of stay in favour of the landowners on 20.07.2004 and the appeal was only allowed on 19.01.2016. It is the claim of the appellant that the amount was deposited with the office of the Land Acquisition Collector in the year 2006 and as to what amount is to be deposited in the account of the beneficiaries was an issue which was to be decided and whether any benefit is to be granted on the first issue regarding the entitlement under the 2013 Act. Counsel for the appellant has referred to the affidavit filed by the State before the Apex Court wherein this factual aspect has been mentioned that the amount for 129 kanals 4 marlas had not been collected.

15. Recently, the Apex Court in CA No.5393 of 2010 titled *M/s Godrej Sara Lee Ltd. Vs. The Excise & Taxation Officer-cum-Assessing Authority & others*, decided on 01.02.2023, held that Court has to see

whether an exceptional case has been made out or not and a writ petition

may be maintainable but may not be entertained and the fine but real distinction between the two should not be lost sight of to relegate a person to his alternative remedy and it is only a self-imposed restriction.

16. We also find that there is a contradiction against the alternative prayer made by the landowner regarding the claim for equal compensation as awarded to the other landowners which may not be admissible before the Reference Court or the authority constituted under the 2013 Act for determination of the market value. The authority while determining the award of the Collector under Section 69 of the Act is to see whether the Collector has followed the parameters set out under Sections 26 to 30 of Chapter V which would be calculated under the 2013 Act. The provisions of Section 69 read as under:

“69. Determination of award by authority.-- (1) In determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under section 26 to section 30 and the provisions under Chapter V of this Act.

(2) In addition to the market value of the land, as above provided, the Authority shall in every case award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the preliminary notification under section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(3) In addition to the market value of the land as above provided, the Authority shall in every case award a solatium of one hundred per cent. over the total compensation amount.”

17. Therefore the right of the appellant, prima facie, for the claim of alternate compensation under the 1894 Act would be not within the purview of the said authority. Resultantly, we find that the order dated 01.12.2022 of the learned Single Judge suffers from the above-said infirmity and therefore, the observations of the Apex Court in Mayan Pal Singh Verma (supra) would also come into play in the above facts and circumstances.

18. Accordingly, we have no option but to remand the matter for fresh decision. The present appeal is accordingly allowed and the order dated 01.12.2022, passed by the learned Single Judge is set aside and the writ petition is restored to its original number. To be listed as per Roster. It will be open to the appellant to amend the writ petition to challenge the order dated 25.02.2022 (Annexure R-2) since specifically the same was not done before the learned Single Judge though the same had been passed in pursuance to the directions passed by the learned Single Judge.

(G.S. SANDHAWALIA)
JUDGE

02.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : Yes