

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8580-2017 (O&M)

Decided on:-07.11.2023

K.K. Sharma

....Petitioner.

vs.

Land Acquisition Collector, PUDA Complex and anotherRespondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Pankaj Katia, Advocate and
Mr. Amit Kaushik, Advocate for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab for respondent No.1.

Mr. Karan Gupta, Advocate for respondent No.2.

HARKESH MANUJA J. (Oral)

CM-14439-CII-2023

Application is allowed as prayed for, subject to all just exceptions. Copy of award dated 16.10.2014 (Annexure P-14) is taken on record.

Main case

1. By way of present revision petition, challenge has been laid to an order dated 13.10.2017 passed by the Land Acquisition Collector-cum-Chief Administrator, BDA, Bathinda (for short, "LAC"), declining the relief claimed by the petitioner qua release of compensation awarded in his favour in pursuance to award dated 16.10.2014 passed by the Reference Court.

2. Briefly stating, around 41 Bigha 14 biswa, out of 64 bigha, 13 biswa of land owned by the Engineering Co-operative House Building Society, (for short, "Society") situated at Bhatinda, came to be acquired vide notifications dated 06.10.2004 and 07.03.2005 issued under Sections 4 and 6

of the Land Acquisition Act, 1894 (hereinafter referred to as “1894 Act”), followed by an award dated 06.03.2007, whereby market value was assessed @Rs.30 lakhs per acre, besides grant of other statutory benefits.

3. Aggrieved thereof, petitioner being one of the members of Society sought reference under Section 18 of the 1894 Act, seeking enhancement of compensation. The Reference Court, vide award dated 16.10.2014, enhanced the market value to Rs.1000/- per sq. yds. besides other statutory benefits. Still aggrieved, petitioner filed RFA-2239-2016, before this Court, which came to be decided vide judgment dated 22.01.2018, granting further enhancement to Rs.1150/- per sq.yds.

4. In a separate but related development, faced with a conflict between the land owned by the Society and the acquired land, the LAC filed a petition under Section 31(2) of the 1894 Act before the Reference Court, seeking deposit of the amount assessed vide award dated 06.03.2007 as well as for issuance of appropriate direction regarding its disbursal. The said reference came to be decided vide award dated 30.11.2015 with the following relevant observation:-

“This Court hold that the plot which falls within site plan Ex.PZ above the Green line, are those plot which has been acquired by the PUDA. All the owners of the said plot are entitled for the compensation.”

Yet, having not received the compensation amount, petitioner approached this Court by filing CMs No.6946-47-CI-2017 in RFA-1452-2015, wherein vide order dated 08.09.2017, he was directed to approach the Chief Administrator, PUDA, Bathinda, in order to redress his grievance. The operative part of the said order is reproduced hereunder:-

“In view of the statement made by the counsel for the non-applicant-appellant, on instructions and as per the affidavit referred to above, liberty is granted to applicants to approach the Chief Administrator, Bathinda Development Authority, Bathinda, within a period of two weeks from today.

In case on their approaching the Chief Administrator, they are able to establish that the land which was in their ownership has been acquired by PUDA, a decision be taken within a period of two weeks by the Chief Administrator from the date of submission of the claim and the consequential benefits be released to the applicants within a further period of 10 days.”

5. In pursuance thereof, the petitioner approached the Chief Administrator, Bathinda vide representation dated 14.09.2017, which came to be rejected vide order dated 13.10.2017, with the following observations:-

“In this regard the Revenue Branch of BDA/PUDA informed that there is no reference regarding the share of the applicants in the decision dated 30.11.2014 u/s 31(2) passed by Reference Court nor they have been able to place on record any proof regarding the compensation received by them from the Court. Therefore, till the time they do not inform regarding the compensation received by them from the Reference Court and do not bring any proof till then the enhanced compensation cannot be calculated. The revenue Branch also informed that the Hon’ble Punjab and Haryana High Court vide order dated 08.09.2017, relevant “In case on their approaching the Chief Administrator, they are able to establish that the land which was in their ownership has been acquired by PUDA...” has bound down the applicants to prove their land to have been acquired.

On the basis of the abovesaid facts I have come to the conclusion that despite giving 2 opportunities Sh. K.K. Sharma and Smt. Sarabjit Kaur have not been able to bring any documentary proof regarding the compensation taken by them

from the Reference Court u/s 31(2), whereby, it can be inferred that as to the land Owners had how much land as taken by the Hon'ble Reference Court and how much compensation is payable to them. Neither these applicants have been able to prove as to how much of their land has been acquired by PUDA/BDA. Accordingly, in the given circumstances it cannot be established as to how much enhanced compensation has to be paid to them. The said order was pronounced. The applicants have been sent 1-1 copy of this order."

6. Impugning the aforesaid order, learned counsel for the petitioner submits that no specific reference to the share of petitioner in the decision dated 30.11.2015, passed under Section 31(2) of the 1894 Act, cannot be attributed to him as the provisions of Section 31(2) only entitles, enables or empowers the LAC to make reference and not the land-owners.

He further points out that the main ground, on which, the petitioner was non-suited was that he could not produce the document of his title. In this regard, learned counsel submits that the petitioner though submitted documentary proof of his entitlement along with an affidavit before the appropriate authorities i.e. LAC, but the same were never considered. He further submits that all those documents have even been attached along with this petition as Annexure P-5 (colly) and the petitioner is still ready and willing to furnish those documents afresh before respondent No.1.

7. On the other hand, learned counsel representing respondent No.2 vehemently submits that in terms of order dated 30.11.2015 passed by the Reference Court, the petitioner could not establish that his land was situated above the Green line marked in site plan Ex.PZ as observed in para 62

thereof and thus, he was not entitled for release of any compensation amount.

8. I have heard learned counsels for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

9. The LAC while passing the order dated 13.10.2017 so as to non-suit the petitioner has placed much reliance upon the award dated 30.11.2015 passed by the Reference Court in exercise of its powers under Section 31(2) of the 1894 Act, which apparently appears to be wholly misplaced.

A perusal of the award dated 30.11.2015, clearly shows that the same was never a determination as regards the apportionment of compensation among all the members of the Society as neither all of them, nor even the petitioner, who also happened to be one of its members were made party to the said reference; nor any issue in this regard was framed by Reference Court. Even no opportunity was granted to all the members to lead evidence on the point of apportionment of their specific entitlement. Rather, merely a determination in general was made to the effect that all the owners having plots above the green line in site plan Ex.PZ were entitled for compensation.

Thus, the reasoning recorded by the LAC while passing the order dated 13.10.2017 that no specific reference regarding the share of the applicant was ever made in the decision dated 30.11.2015 passed by the Reference Court was wholly misplaced. It may be pointed out here that the reference under Section 31(2) of the 1894 was purely an act of LAC and the

Reference Court in its wisdom never chose to serve upon all the members of the Society and service upon few of them was dispensed with vide order dated 03.03.2012 as noticed at page 76 of the paper book, definitely for the reason that no specific determination about apportionment qua all the members was made. Being deeply conscious of the aforesaid, this Court in its order dated 08.09.2017 granted liberty in favour of petitioner to approach respondent No.1 and establish that the land owned by him also formed part of acquisition.

10. Resultantly, in view of the discussion made herein-above, the present revision petition is allowed. Order dated 13.10.2017 passed by the LAC is set aside. The petitioner is granted another opportunity to approach the LAC, within a period of two weeks from today and furnish the proof of his ownership/membership of the Society as well as the land allotted to him forming part of acquisition and the LAC, Bathinda upon verification shall release the entire amount of compensation towards the share of the petitioner in his favour, within a period of two weeks thereafter along with all other statutory benefits as well as interest payable under the provisions of 1894 Act, subject to there being any interim order relating to decision dated 22.01.2018 passed by this Court in RFA-2239-2016. In case, the aforesaid exercise is not concluded within six weeks from today, the petitioner shall be at liberty to seek revival of the present revision petition.

11. Pending application, if any, stands disposed of.

07.11.2023

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(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No