

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 17060 of 1995

Date of decision : August 23, 2023

G.D. Gupta and others

....Petitioners

Versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. C.L.Sharma, Advocate for petitioners
No. 1 to 3 and 5

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana

KULDEEP TIWARI,J.

1. The petitioners, who claim themselves to be the owners in possession of pucca residential houses, constructed over land comprised in Khasra No. 49/12/2, 50/14,50/15/1,2 situated in Village Mewala Maharajpur, District Faridabad, have challenged the land acquisition notifications as issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter to be referred as 'the Act of 1894'), respectively on 25.5.1992 and 3.5.1993, by the respondent-State, on the ground, that the State Government while announcing the award on 1.5.1995, announced it only in respect of "land", whereas, no award was announced for the superstructures constructed on the land in question. The petitioners

asserted that it was mandatory to announce the award under Section 11-A of the Act of 1894, qua the superstructures as well and that too. within two years from the date of issuance of declaration. Since there was no such award with regard to the superstructures, therefore, the acquisition has lapsed.

2. Learned counsel for the petitioners has placed heavy reliance upon the award dated 1.5.1995, Annexure P/6, wherein, it has been mentioned that the supplementary award will be announced later on, on receipt of assessment, in respect of superstructures. The relevant extract of award (supra) is read as under :-

“Building Structures

There are several building structures on the land under acquisition and the assessment in respect of these structures has not so far been made by the Executive Engineer, HUDA, Division No. 1, Faridabad. A supplementary award will be announced later-on on receipt of assessment in respect of these buildings structures from the Executive Engineer, HUDA Division No. 1, Faridabad.”

3. In support of his argument, learned counsel for the petitioners has referred to Section 11-A and Section 13-A of the Act of 1894, to state that, since no award qua superstructures was passed within the time period, as prescribed under the above provisions of the Act, therefore, the entire acquisition proceedings stand lapsed. For ready reference, Section 11-A and 13-A of the Act of 1894, read as under:-

“11A. Period within which an award shall be made. -

The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse.”

“13A. Correction of clerical errors, etc. - (1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority.”

4. We have perused the entire record as available on file with the able assistance of both the counsel for the petitioners and respondent-State. The issue of non announcement of award qua superstructures, within two years from the date of issuance of declaration under Section 6 of the Act of 1894, has already been considered by Hon'ble the Supreme Court and the Full Bench of High Court of Gujarat. In fact, this issue is no more *res integra*. It has been categorically held by the Hon'ble Supreme Court that non announcement of award qua the superstructures within two years from issuance of declaration under Section 6 of the Act of 1894, is neither a ground to challenge the acquisition proceedings, nor any lapsing of acquisition proceedings can be claimed as an appropriate remedy, rather the apt remedy available to the land owners, is to file, an application seeking reference under Section 18 of the Act of 1894, for making assessment of

compensation for the structure(s), if any, as well. We find support in the above regard from the judgment of the Hon'ble Supreme Court in case of **Mohanji and another Vs. State of Uttar Pradesh 1995 (8) JT 599**. The relevant paragraph of the judgment is reproduced as under:-

“5. It is no doubt true that the entire award which is contemplated under Section 11 of the Act by virtue of the prescription in Section 11A has to be made within the period of two years failing which the entire proceeding shall lapse. The question is whether it can be said in the present case that no award has been made under Section 11 of the Act in this proceeding ? In our view it cannot be said that no award under Section 11 has been made for the land acquired. Admittedly, compensation has been determined in the award so made for the entire area of 0.99 acres. In view of the fact that no piecemeal award by making a subsequent award after the expiry of the period of two years is contemplated in law, the award dated 23.9.1986 must be construed as the whole award made under Section 11 awarding compensation for the entire area of 0.99 acres with no compensation awarded for the building. The Appellants, therefore, had the right to claim compensation for the building by seeking a reference under Section 18 of the Act treating the award as one in which compensation had been determined and awarded only for the entire land measuring 0.99 acres but no compensation was awarded for the building therein. The Appellants had the remedy to claim compensation for the building in accordance with law treating the award made as not awarding any compensation for the building. That is, however, a different matter and it does

not require any further consideration in this context. It is sufficient to say that the award dated 23.9.1986 made within the period specified in Section 11A of the Act must be construed as an award under Section 11 in the proceedings for acquisition of the Appellants' land bearing Plot No. 1311 having a total area of 0.99 acres. The contention that the entire proceeding for acquisition of the land has lapsed by virtue of Section 11A cannot, therefore, be accepted."

5. Further the Full Bench of High Court of Gujarat in the case of **Kanchan Bhai Shaverhai Desai and others Vs. State of Gujarat and others (1995) 1 GLH 641 (FB)**, while dealing with the concept of supplementary award observed that the scheme of the Act is to announce only one award, and if certain aspects have not been considered while announcing the award, remedy is not to announce a supplementary award, but, to file a reference under Section 18 of the Act of 1894. The relevant paragraphs are reproduced as under:-

"10. By virtue of the definition of the word "land" under Section 3(a) of the Act, the benefits which arise out of the land, and things attached to the earth or permanently fastened thereto are included in the said expression. It has been held by the Supreme Court in Chaturbhuj Pande and Ors. v. Collector, Raigarh AIR 1969 SC 255 that the value of the trees standing on the land at the time when Section 4 notification is issued has to be taken into consideration when the market value of the land is being determined under the clause Firstly of Section 23(1) of the Act. The standing crops or trees which are mentioned in the clause Secondly of Section 23(1) thereof can only be those which come into existence after the notification under Section 4 is issued.

There is always a time-lag between issuance of the notification under Section 4 of the Act and the completion of the acquisition proceedings with the making of the award by the Collector under Section 11. Till the possession is taken under Section 16, or earlier under Section 17, the owner of the land is at liberty to cultivate the same. The owner may not know as to when the possession will be taken. Obviously, with a view to compensating him for the loss which may be suffered, if standing crops or trees planted subsequent to Section 4 notification, are taken away, he is entitled to compensation under the clause Secondly of Section 23(1) of the Act. But for this provision the claimants would not have been entitled to claim any compensation because of the clause Seventhly of Section 24 of the Act which provides that the Court shall not take into consideration any outlay or improvements on the land which is made or effected after the notification under Section 4 of the Act. To give an example, if any immovable structure is erected on the land after Section 4 notification is issued and before the possession is taken, no compensation would be payable. But if any crop is cultivated then by virtue of the clause Secondly of Section 23(1) of the Act, compensation will be paid by reason of that crop having been taken away at the time when the possession is handed over. Therefore, while right to claim compensation exists at the time when possession is taken, the claim in respect thereof must arise and be made at the time or before the award is made. When an award is made under Section 11 of the Act, if possession had been taken earlier and there was a standing crop, then the Collector will have to take into consideration the damage sustained by the claimant in respect of the standing crop whose possession was taken before the award. If possession is not taken before the award, but if standing crop exists when the award is made even then, possibly the value of the standing crop will have to be taken

into consideration (by the Court on a reference under Section 18 of the Act) because after making of the award the Collector becomes entitled to take possession of the land. In other words, the quantum of damage sustained or likely to be sustained in respect of the crop which exists at the time of taking of the possession can be ascertained by the Collector. Where, however, no crop exists and the land is cultivated after the award has been made by the Collector, it is quite obvious that the Collector cannot take that factor into consideration which did not exist at the time when the award was made. When the award is made, the claimant knows that he can be divested of the possession any time thereafter. If he chooses to cultivate the land after the award, he obviously runs the risk of being deprived of the benefits of the crop, if the possession is taken before the crop can be harvested. If he, nevertheless, chooses to cultivate the land and he still wants to secure himself or desires that compensation should be paid to him, in the event of the standing crops being taken away when the possession is taken, then it is open to him to seek a reference under Section 18 of the Act. If such a reference is sought then the Court while determining the amount of compensation payable shall take such a damage into consideration which may have occurred even with regard to the crop cultivated after the Collector's award. That damage must occur at or before the time when the Court makes its award. The Court cannot award damages which cannot be quantified which will only be in those cases where the crops have not been cultivated when the award is made.

11. The reading of the Act in general and Sees. 11, 12 and 18 of the Act in particular shows that in respect of the same parcel of land only one award is contemplated. When the Collector makes his award under Section 11 of the Act, the same is with regard to the area of the land, the compensation

and the apportionment thereof. With regard to that area of land for which award is made the same is final under Section 12 of the Act. This being so, the question of any supplementary award being given in respect of the same area or part thereof does not arise. In arriving at the amount of compensation all the factors mentioned in Section 23 of the Act have to be taken into consideration. If some of the factors are not taken into consideration it cannot be that in respect of those factors which are omitted supplementary awards can be made. If the contention of the petitioners is right, then it can be conceivable that in respect of the same parcel of land there can be six different awards, each dealing with one aspect. If the award of the Collector does not deal with one or more aspects contained in Section 23 of the Act, the remedy is not to ask for a supplementary award, but the only recourse which is open to a claimant is to file an application under Section 18 of the Act for a reference. As directed if it is only one award in respect of a parcel of land by the Collector, it would ipso facto follow that the Court can also make only one award on the reference being made to it.”

6. In view of the above settled proposition of law, we do not find any merit in the present petition. The non passing of any award with regard to superstructures, if any, as exist on the acquired petition land, does not give any right to the petitioners to challenge the acquisition proceedings, nor does it make the acquisition proceedings to lapse. The petition land was acquired through notification and declaration issued respectively, under Sections 4 and 6 of the Act of 1894, for public purpose namely, for the development and utilization as dividing road of Sectors 45 and 46, Faridabad and further as District Shopping Centre of Faridabad. The award was announced way back on 1.5.1995 and thereupon, the

possession of the land in question was also assumed by the Acquiring Authority concerned and subsequently handed over to Haryana Shehri Vikas Pradhikaran (HSVP), (erstwhile Haryana Urban Development Authority (HUDA). Thereafter, this Court through interim order made on 24.11.1995, ordered the parties herein, to maintain status quo, whereas the possession stood assumed by the Acquiring Authority concerned, way back on 1.5.1995 i.e. on the date of announcement of award.

7. In view of the above settled proposition of law and the factual aspect, we do not find any merit in the present writ petition. Therefore, the same is ordered to be dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 23, 2023

'dalbir'

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No