

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

**Reserved on: 09.10.2023
Pronounced on: 19.10.2023**

1. **CWP-20603-2015 (O & M)**

RUPINDER SINGH AND ORS.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents
2. **CWP-23089-2019**

JASWANT KAUR AND ANR.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents
3. **CWP-10238-2021**

GURNAM SINGH AND ORS.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents
4. **CWP-13356-2016 (O & M)**

LAKHNAUR COLD STORAGE AND ANR.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

5.

CWP-22955-2015

NARINDER SINGH AND ORS.

.....Petitioners

Versus

STATE OF PUNJAB AND ORS.

....Respondents

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

Argued by: Mr. Amit Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate
for the petitioner(s) (in CWP-22955-2015).

Mr. T.P.S.Tung, Advocate
for the petitioner(s)
(in CWP-20603-2015 and
petitioner no. 1 in CWP-13356-2016).

Mr. Ishnoor Singh, Advocate
for Mr. Vikram Singh, Advocate
for petitioner No. 2 (in CWP-13356-2016).

Mr. Naresh Kaushal, Advocate
for the petitioner(s) (in CWP-23089-2019).

Mr. Mohit Jaggi, Advocate
for the petitioner(s) (in CWP-10238-2021).

Mr. Maninder Singh, DAG, Punjab.

Mr. R.S.Khosla, Sr. Advocate with
Ms. Shreya Singh, Advocate
for respondent - GMADA.

SURESHWAR THAKUR, J.

1. Since all the writ petition(s) relate to common questions of law, and also with the facts therein being identical, therefore, the same are being disposed of through a common order.

2. Importantly when the impugned notification(s) for acquisition in all the writ petition(s) (supra) are for the

expansion/setting up of Urban Estate, in the area of revenue estate of

SAS Nagar, Mohali.

3. For the sake of brevity, the facts of CWP-20603-2015 are taken here for adjudication upon the writ petition(s) (supra).

4. Through an award bearing No. 555 dated 10.06.2015 (Annexure P-1), the writ lands became acquired for expansion of Section -90, Urban Estate, Mohali.

5. The above award (supra) has been prayed to be quashed and set aside.

6. The premise upon which the above writ claim has been rested is grooved in the factum, that through the impugned award (Annexure P-1) 100 per cent land pooling has been enforced, upon, the land-losers concerned, thereby, the impugned award being expropriatory and resultantly it becoming amenable for being quashed and set aside.

7. The reason for the above argument becoming made before this Court, is further rested on the premise, that without any financial compensation becoming determined, vis-a-vis, the land-losers concerned, thereupon, on the plots, as become allotted to them under the Land Pooling Scheme, thus thereby they would become disabled to raise any construction(s).

8. The award (supra) became pronounced for the public purpose (supra). Earlier certain land-losers concerned, who were covered by a similar notification for acquisition, had filed eight writ petition(s) before this Court. From amongst eight writ petition(s), five writ petition(s) respectively bearing No. CWP-8222-2006, CWP-6401-2006, CWP-7159-2006, CWP-7263-2006 and CWP-7153-2006,

which two writ petitioners were owners of Cold Storage and Petrol Pump respectively, yet continued to pursue their writ petition(s) before this Court.

9. However, subsequently, certain land owners of villages Landran, Lakhnaur and Sohana vide letter of 17.09.2014, requested for announcement of award as per land pooling scheme. Consequently, since a major portion of lands under litigation became available for furthering the public purpose concerned. Therefore, the impugned awards became announced thereby determining compensation only in terms of land pooling under the land pooling policy of the Government of Punjab.

10. The consequence of assigning to the land-losers concerned, the benefit of the land pooling policy (supra), was that the land owners concerned were made stake holders in the project to be operated by the GMADA and against each acre of their acquired land, they became offered land pooling of 1000 square yards of residential area and 121 square yards of commercial area in Sector – 90.

11. The present petitioners also as revealed by the hereinafter extracted table were offered the benefits of the land pooling scheme.

Land to be acquired (in Kanal)	Developed residential area to be returned (in sq. yard)	Developed Commercial area to be returned (except parking)	Remarks
3 Kanal	150	---	No commercial site shall be given
2 Kanal	300	---	No commercial site shall be given
3 Kanal	450	---	No commercial site shall be given

4 Kanal	500 (500 OR 400 + 100 OR 300 + 200)	One shop 12 ft x 45 ft – 60 sq. yard	For shop basement, G + 1, FAR 1:20 shall be permissible
8 Kanal	1000 (500 + 500 OR 500 + 400 + 100 OR 500 + 300 + 200)	SCO / SCS 121 sq. yard or 2 shops 12 ft x 45 ft – 60 sq yard	For SCO/SCS basement, G + 2, FAR 1:30 shall be permissible and for shop basement, G + 1, FAR 1:20 shall be permissible.

12. Moreover, apart from the above, the hereinafter benefits were also offered to the land-losers concerned i.e.

- a) The land owners who show willingness for accepting the land pooling scheme, thereupon, after theirs taking over the possession of the land, theirs developing the land and handing over the possession of their share, but subject to Chakota (rent) being given to them at the rate of rupees 25000/- annually per acre.
- b) On registry of the plots, being executed in favor of the land owners, thus exemption(s) from the stamp duty being given to the land losers, but in respect of the plots to be given under the land pooling scheme.

13. However when CWP No. 12151 of 2016, titled as Sampuran Singh and Others Vs. State of Punjab and Others, came up for hearing before this Court, thereons on 04.07.2016, the hereinafter extracted order was made.

“ To be taken up alongwith CWP No.20603 of 2015.
Meanwhile, keeping in view the fact that acquisition has already been upheld by this Court, if the petitioners submit affidavits to the Land Acquisition Collector that they are not interested for acquisition of their land under the Land Pooling Scheme, let compensation for the

acquired land be determined in accordance with law.”

14. Since a reading of the above stated order(s) reveals, that acquisition proceedings, as became launched in respect of the lands covered by similar notification(s) became upheld by this Court, yet this Court permitted the petitioners to submit affidavits to the Land Acquisition Collector, thus declaring therein, that they are not interested for acquisition of the land under Land Pooling Scheme, and, that resultantly compensation for the acquired lands, be determined in accordance with law.

15. The effect of the above, is that, there is estoppel against a re-challenge being made by the present petitioners qua the launching of the acquisition proceedings, but on the premise that the same becomes upheld through verdict (supra) becoming made by this Court.

16. Moreover, when the petitioners also in terms of the verdict (Supra) requiring them to furnish their affidavits, before the Land Acquisition Collector concerned, with disclosures therein, whether they are or not, thus interested for the acquisition of the lands under the Land Pooling Scheme, rather they are interested for determination of cash compensation, but they omitted to file the affidavit(s) to the said extent.

17. Consequently, however yet the land-losers concerned, were summoned for a personal hearing on 20.03.2018, to yet purvey their options (supra). However, yet the requisite consent was not given by the land-losers concerned.

18. The above resulted in an affidavit dated 22.03.2019 of the Estate Officer, GMADA, becoming furnished before this Court. The proceedings of the Committee became also placed before this Court, wherein, becomes unfolded the hereinafter manner of determination of

cash compensation to the land losers concerned.

Sr. No.	Village Name	Basic Market Rate Determined	100 % Solatium	12 % A.P.	Total Compensation per Acre
1.	Lakhnaur	1,00,00,000/-	1,00,00,000/-	12,00,000/-	2,12,00,000/-
2.	Sohana	1,10,00,000/-	1,10,00,000/-	13,20,000/-	2,33,20,000/-
3.	Landran	1,23,78,533/-	1,23,78,533/-	14,85,424/-	2,62,42,490/-

19. Reiteratedly since the acquisition proceedings become upheld, thereby the instant writ relief asking for the quashing of the acquisition proceedings rather becomes estopped to be assigned to the present petitioners.

20. Be that as it may, since it is spoken in the reply, on affidavit, furnished to the writ petition by the respondents, that the petitioners are yet at liberty to receive the benefits of the land pooling scheme, in terms of the land pooling policy (Annexure R2/1) or cash compensation as determined under Section 26 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

21. Consequently, with the above opportunity becoming yet assigned to become availed by the petitioners, thus the petitioners cannot yet make any valid challenge to the launching of the acquisition proceedings. The said challenge for the above reason becoming completely estopped by the norm of constructive res-judicata.

22. The most conspicuous reason for this Court refraining from quashing the award (supra), is firmly grounded in the factum, that the acquisition of the writ lands is but imperative, for advancing the planned development of the area. Necessarily when the acquisition of the disputed lands rather are but a dire necessity, for furthering the apposite public purpose. Resultantly this Court refrains from protecting

the individualistic interest of the land losers rather is inclined to further the public interest concerned, as would become sub-served through the upholding of the impugned notification(s).

23. Moreover, the averment as to the respondent practicing invidious discrimination(s), vis-a-vis the petitioner(s) herein, though also makes allusions to specific instances of discrimination(s) vis-a-vis the land losers concerned. However, since this Court for reasons (supra) has made a firm conclusion that the acquired lands are an integral component of the layout plans. Thus, the said conclusion also ousts the land-losers concerned to claim parity with other purportedly similarly situated estate holders concerned qua whom release(s) were made, but only on the premise that their released lands were not an integral component of the layout plans. Thus, the argument (supra) is merit-less, and, is rejected.

Argument of the learned counsel for the petitioner(s) that the award was announced after expiry of statutory period as prescribed in Section 11-A of the Land Acquisition Act, 1894 and Section 25 of the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

24. The learned counsel for the petitioner(s) have argued, that since the award has been pronounced, after the expiry of statutory period, as prescribed in Acts (supra), besides the conversion of the Award into Land Pooling Scheme rather happening without assessment of monetary compensation, therefore, prejudice has been caused to the petitioners, as they had been deprived of the option for choosing compensation over land pooling, therefore, the award is vitiated.

25. However, the above argument is merit-less, as on a reading of the reply furnished to the writ petition(s) (supra), it becomes

revealed that various land owners had filed writ petitions, before this Court, thus challenging the acquisition notification(s), wherein, the dispossession of the said petitioners was stayed by this Court, thereby obviously did well restrain the respondent concerned, from passing an award, whereby the acquiring authority became well precluded to make an award.

26. The period within which the orders (supra) remained in operation, is to be, thus within the domain of the explanation carried in Section 11-A of the Land Acquisition Act, 1894, provisions whereof are extracted hereinafter, rather excluded from the ordained period of two years hence commencing from the date of making of a declaration under Section 6 of the 'Act of 1894', thus for the makings of the apposite computations. Therefore, after excluding the said period, rather for making the relevant computations, thereby the rendition of the award, cannot be construed to be, thus made beyond the period of two years, post the issuance of declaration of Section 6 of the 'Act of 1894' nor thereby the award is vitiated.

(Provisions of Section 11-A of the 'Act of 1894')

[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:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.]

27. In adopting the above view, this Court finds support from a verdict made by the Hon'ble Supreme Court, in case titled as '***The State of Maharashtra and Others Vs. M/s Moti Ratan Estate and Another***' ; **2019 AIR (SC) 4149**, wherein, in paragraphs no. 7.5 and 7.8 thereof, paras whereof become extracted, it has been enunciated, that the period during which there is a stay, over the action or proceedings by a Court of law, thereupon, that period has to be excluded in computing the statutory period of two years in the passing of an award under Section 11 of the 'Act of 1894'.

7.5 On considering catena of decisions of this Court, referred to hereinabove, the following propositions of law can be culled out:

(i) when the scheme of the acquisition is one, interim stay granted in respect of one pocket of land would operate even with respect to other pockets of land and in such a situation the authorities are justified in not proceeding with the acquisition proceedings and therefore the acquisition proceedings would not lapse;

(ii) interim order of stay granted in respect of one of the land owners would have a complete restraint for the authorities to proceed further;

(iii) when the stay has been granted in one matter and where the scheme was one, the authorities were justified to stay their hands;

(iv) the extended meaning of the words "stay of the action or proceedings under Section 11A of the Act" would mean that any interim effective order passed by the court which

may come in the way of the authorities to proceed further;
(v) Explanation to Section 11A of the Act is in the widest possible terms and there is no warrant for limiting the action or proceedings, referred to in the explanation, to actions or proceedings preceding the making of the award under Section 11 of the Act and therefore the period of injunction obtained by the land holders staying the acquisition and authorities from taking possession of the land has to be excluded in computing the period of two years.

7.8 In meeting out a complex situation, the conclusion which emerges is that if there is any stay over the action or proceeding by a Court of law, in one or the other matter arising from the selfsame acquisition proceedings in reference to Section 4 followed with Section 6 of the Act, the authorities are said to be justified in the given facts and circumstances to stay their hands and await the decision of the Court and **such a period during which there is a stay over the action or proceeding by a Court of law in a matter, that has to be excluded for all practical purposes, in computing the statutory period of two years in passing of an award under Section 11 of the Act.**

28. Further support is derived from a judgment made by the Hon'ble Supreme Court in case titled as **'Faizabad-Ayodhya Development Authority, Faizabad Versus Dr. Rajesh Kumar Pandey and Others ; 2022 Live Law (SC) 504**, wherein, the relevant expostulations of law have been made in paragraphs No. 10.12 and 10.13, 17 (i) thereof, paras whereof are extracted hereinafter.

10.12 Thus, it is necessary to dwell into the reasons as to why no award has been made. As discussed aforesaid, if there is an order of restraint on the Collector or on the acquiring authority and as a result of which, the Collector or the Land Acquisition Officer is not in a position to make

an award for reasons beyond his control and in compliance of the interim order granted by a court of law at the instance of the land owner or any other person who may have questioned the acquisition, the period during which the interim order has operated has to be reckoned and if on the date of enforcement of Act, 2013 i.e., 01.01.2014, no award has been made owing to the operation of such an interim order granted by a Court in favour of the land owner, then the provisions of the 2013, Act cannot straightaway be made applicable in the determination of the compensation. This is because, but for the operation of the interim order, the award could have been made under the provisions of the Act, 1894 until 31.12.2013 and then provisions of Act, 1894 would have applied as per clause (b) of sub-section 1 of Section 24. But on the other hand, owing to the operation of the interim order granted by a Court in favour of land owner, the award would not have been made as on 01.01.2014 when the Act, 2013 was enforced.

10.13 In our view in such a situation the acquiring authority cannot be burdened with the determination of compensation under the provisions of the Act, 2013. In other words, the land owner cannot, on the one hand, assail the acquisition and seek interim orders restraining the authorities from proceeding further in the acquisition, and on the other hand, contend that since no award has been made under Section 11 of Act, 1894 on 01.01.2014, the provisions of the Act, 2013 should be made applicable in determining the compensation.

17. In view of the above and for the reasons stated above, it is observed as under:-

(i) It is concluded and held that in a case where on the date of commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, no award has been declared under

Section 11 of the Act, 1894, due to the pendency of any proceedings and/or the interim stay granted by the Court, such landowners shall not be entitled to the compensation under Section 24(1) of the Act, 2013 and they shall be entitled to the compensation only under the Act, 1894.

29. Further, it is revealed on a reading of the reply, on affidavit, that in the meanwhile, Land Pooling Policy was announced by the Government of Punjab, which came into force on 05.09.2008. Some of the land losers obviously claimed the benefit of the said policy, and had chosen to withdraw their writ petition(s) and thereby thus accepted the acquisition proceedings.

30. Most conspicuously since both the benefits are yet available to be opted by the land losers, inasmuch as, when the respondents are yet assigning to the land losers the benefit of the land pooling scheme besides have also made determination(s) of cash compensation. Therefore, in the wake of above nothing survives to be assigned to the petitioners.

Final Order of this Court.

31. In aftermath, this Court finds no merit in the writ petition(s), the same being completely frivolous, thus are required to be dismissed with costs. Therefore, the same are dismissed with costs of Rs. 25,000/- vis-a-vis each of the petitioners, in each of the writ petition(s), to be forthwith deposited by them with the Treasurer of the **“Punjab and Haryana High Court Employees Welfare Association”**.

32. The impugned notification(s) and the consequent thereto award(s) are maintained and affirmed.

33. Since the main case itself has been decided, thus, all the

pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

19.10.2023

kavneet singh

Whether speaking/reasoned

Whether reportable

:

:

Yes/No

Yes/No

(KULDEEP TIWARI)
JUDGE