

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

CWP-24548-2015 (O & M)

Reserved on: 08.08.2023

Pronounced on: 17.08.2023

HARDEV KAUR

.....Petitioner

Versus

UNION OF INDIA AND ORS.

....Respondents

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

Argued by: Mr. A.S.Narang, Advocate with
Ms. Manpreet Kaur, Advocate
for the petitioner.

Mr. Vipul Aggarwal, Sr. Panel Counsel
for the respondent No. 1 – U.O.I.

Mr. Maninder Singh, DAG, Punjab
for respondents No. 2 and 3.

SURESHWAR THAKUR, J.

1. This Court on 21st July, 2017, had drawn a verdict upon the instant writ petition. In the operative paragraph(s) of the said verdict, this Court, thus made the hereinafter extracted directions.

“....A perusal of Section 26(1) of the 2013 Act shows that there are certain parameters provided for assessment of compensation for the acquired land. The market value so calculated in terms of sub-section (1) is to be multiplied by a factor to be specified in the First Schedule. First Schedule provides that a multiplication factor from 1 to 2 based on the distance of a project from urban area, as may be notified by appropriate Government, has to be applied. The “appropriate Government” means in relation to

acquisition of land in the State. The word 'notification' has also been defined in Section 3(v) of the 2013 Act. In the case in hand, admittedly the State has not issued any notification specifying multiplication factor to be applied for assessment of compensation. The land of the petitioner is admittedly located in the rural area. The State instead of issuing notification has merely issued instructions dated 16.10.2014 specifying multiplication factor, that too specifying multiplication factor in the range of 1 to 1.25. The same has been applied in the case of the petitioner by the Collector while announcing the award after the decision of the earlier writ petition filed by the petitioner.

As the statutory requirement of issuing the notification in terms of Section 26(2) read with First Schedule to the 2013 Act has not been complied with before announcing the award by the Collector, in our opinion, the award cannot be legally sustained. Mere instructions cannot be considered as compliance to the statutory requirement.

Accordingly, the award dated 29.5.2015 passed by the Collector in the case of the petitioner is set aside. Necessary consequence to follow.

The writ petition stands disposed of.”

2. Therefore, the award of 29.05.2015, as became passed by the Collector concerned was quashed and set aside. However, the verdict (supra), as made on 21.07.2017, upon, CWP No.24548-2015, was through, the institution of Review application bearing number RA-136-2018, hence in the writ petition (supra), thus asked to be reviewed. The said review application, was allowed, hence through an order made thereons, on 02.12.2022. The reasons as set forth in the affirmative order (supra), thus allowing the review application becomes extracted hereinafter.

“The present review application is for review of order dated 21.07.2017.

In compliance of order dated 02.09.2022, affidavit of Executive Engineer, PWD (B&R), Ludhiana has been filed and the same is taken on record. As per affidavit, the office of the Controller, Printing and Stationery, Punjab, Chandigarh, vide letter dated 27.09.2022 (A-3) has clarified that the notification dated 30.10.2014 was published in ordinary gazette of Government of Punjab dated 21.11.2014 (A-2). It has further been submitted that e-gazette portal of Government of Punjab was started in the year 2018 as per Punjab Government-Gazette- Extra Ordinary notification dated 07.08.2018 (A-4) and thus, the online uploading of Gazette of Government of Punjab began in the year 2018.

Keeping in view the fact that the notification dated 30.10.2014 has already been published in ordinary gazette of Government of Punjab dated 21.11.2014 (A-2), the order dated 21.07.2017 is liable to be recalled, as the award was set aside on the ground that the land of the petitioner was located in the rural area and the State has not issued notification specifying multiplication factor to be applied for assessment of compensation.

Learned State counsel has further informed the Court that the amount has already been deposited on 24.09.2015.

Accordingly, the order dated 21.07.2017 is recalled and CWP No.24548-2015 is to be listed as per roster.”

3. It is candidly forthcoming from a reading of the above extracted paragraphs, as carried in the order made by this Court, on 02.12.2022, upon review application No. 136-2018 filed in the instant writ petition, that the premise for this Court, quashing the impugned award through a verdict drawn on 21.07.2017, thus became rested, upon, the factum that no notification in terms of Section 26(2) read with

First Schedule to The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short called as the 'Act of 2013') rather becoming issued, whereas, as a matter of fact, the said notification was published in the ordinary Gazettee of the Government of Punjab hence on 21.11.2014.

4. Now given the revival of the writ petition, through an order (supra), becoming made upon the apposite review application, the learned counsel for the petitioner argues, that the impugned award is un-sustainable, thus on the ground, that it becomes rested, upon, a notification planked upon the provisions of Section 26(2) of the 'Act of 2013', provisions whereof stand extracted hereinafter. He argues that the said statutory provisions are unconstitutional besides are ultra vires.

“26. Determination of market value of land by Collector.-

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11.

Explanation 1. The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.- For determining the average sale price referred to in *Explanation 1*, one-half of the total number

of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.- While determining the market value under this section and the average sale price referred to in *Explanation 1* or *Explanation 2*, any price paid as compensation for the land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.- While determining the market value under this section and the average sale price referred to in *Explanation 1* or *Explanation 2*, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purpose of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

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5. The above argument is rested on the plank, that thereby especially in view of the notification, as became issued in terms of Sub Section (2) of Section 26 of the 'Act of 2013', rather no contemplation of just and fair compensation is made, for acquisition(s) being made of the estates concerned, and thereby the impugned award is expropriatory.

6. The above made argument appears to be hyperbolic, as no evidence exist on record suggestive, that the impugned award, as became rested, on the relevant notification, does not justify, the constitutional parameter of thereby just and fair compensation becoming determined qua the acquired estates. May be though the notification (Supra), was binding upon the Land Acquisition Collector concerned, in his drawing the impugned award, besides his placing reliance thereons, but yet the relevant factor, as became applied to the acquired estates concerned, rather became enjoined to become proven to be a misplaced reliance thereons, thus through adduction of cogent evidence, before the authority concerned, wherebefore whom the

statutory remedy, of enhancement of the appositely determined compensation may have been recoured. However, the statutory remedy for seeking enhancement of the compensation over the figure, as determined under the impugned award, rather has been fairly conceded by the counsel for the petitioner, to not have become recoured, thus through availment of the apposite statutory remedy, as prescribed qua its enhancement, rather before the Authority designated in the 'Act of 2013'. Therefore, when before the said apposite statutorily designated authority under the 'Act of 2013', evidence may have become adduced, that the compensation amount thus determined under the impugned award, is even lesser than the market values thereof, as displayed in the apposite sale exemplars, then may be the award impugned before this Court, thus, on the premise, that there is a deficient assessment of compensation, to the acquired estates, may have become undone or may be compensation amounts rather higher, than the compensation amount awarded in the impugned award, may have been determined by the designated authority, thus in whom became vested the power to decide a petition for enhancement of compensation.

7. Needless to say that for want of recouring of the above befitting statutory remedy, the petitioner cannot well contend, before this Court, that the impugned award is un-sustainable, as deficient amount of compensation has been determined thereunders qua the acquired estate nor can well argue, that as such, neither reasonable nor fair compensation, has been determined qua the acquired lands nor this Court can substitute itself to the otherwise statutorily designated authority before whom alone rather a petition for enhancement was

preferable.

8. After the recalling of the verdict made by this Court, through a order on the apposite review application, the learned counsel for the petitioner, has chosen to seek leave of the Court, to amend the writ petition (supra). The asked for leave for thus amendment(s) being made to the writ petition, are claimed in the hereinafter extracted manners.

“(1) Replace Para 9 with the following para

"That without prejudice to the aforesaid averments regarding the validity of the alleged award dated 29th May, 2015, it is further submitted that the award dated 29th May, 2015 is also not sustainable in the eyes of law being contrary to the provisions of the 2013 Act. The First Schedule to the 2013 Act provides that the factor by which the market value is to be multiplied in the case of rural areas may be notified by the appropriate Government and the factor would be between 1 to 2 based on the distance of the project from the urban area. The relevant portion of the First Schedule is reproduced as under-
"Compensation for land owners -

xxxx xxxx xxxx

1.	<i>Market value of land</i>	<i>To be determined as provided under Section 26.</i>
2.	<i>Factor by which the Market value is to be Multiplied in the case of rural areas</i>	<i>1.0 (one) to 2.00 (Two) based on the distance of project from urban area, as may be notified by the appropriate Government.</i>
3.	<i>Factor by which the market value is to be multiplied in the case of urban Areas.</i>	<i>1 (One).</i>

The word notification has been defined in Section 3 (v), which is reproduced as under-

"3. Definitions-xxx

"notification" means a notification published in the Gazette of India or, as the case may be, the Gazette of a State and the expression "notify" shall be construed accordingly."

In order to notify the Multiplier Factor as required by the above Schedule, the State of Punjab. Deptt. of Revenue Rehabilitation and Disaster Management (Land Revenue

Branch) took a decision vide instructions / orders dated 16.10.2014 that for land situated in rural areas, the Multiplier Factor would be One upto a distance of 10 Kilometer from the municipal limits and for the lands situated beyond that the Multifier Factor would be 1.25. True translated copy of the instructions / orders dated 16.10.2014 is appended as Annexure P-7. A perusal of the above orders / instructions would show that the same are absolutely arbitrary in nature as no reasoning whatsoever has been assigned for choosing the said distance of 10 Kilometers. It is settled law that the government cannot be permitted to pick arbitrary cut off distances without reference to any facts and figures or relevant factors such as population and remoteness. Based on the above arbitrary decision, the State Government took out a notification dated 30.10.2014 (published on 21.11.2014) specifying the above arbitrary Multiplier Factors. True typed copy of the notification dated 30.10.2014 is appended as Annexure P-8. It is respectfully submitted that the notification dated 30.10.2014 suffers from the vice of non application of mind. The notification creates an arbitrary classification of land within 10 kilometers of municipal limits and those beyond it without any intelligible differentia. Furthermore, the 2013 Act provides that the Multiplier Factor would vary between One and Two meaning thereby the State Government is under statutory obligation to notify Multiplier Factors upto Two and the State Government could not have restricted the maximum factor at 1.25. It shall be pertinent to mention here that vide letter dated 25.08.2014 (appended as Annexure R-3 in the reply to CWP- 13076-2014), respondent no. 3 has admitted that the petitioner's land is at a distance of 7 kilometers from the Ludhiana Municipal Corporation. True typed copy of the letter dated 25.08.2014 is appended as Annexure P-9 The arbitrary nature of the impugned notification stands further fortified from the fact that the State of Punjab has superseded the above notification and has now introduced a graded method of applying the multiplier factor with references to population and remoteness of the land. The State of Punjab has issued notification dated 12.01.2021 in supersession of the notification dated 30.10.2014 whereby the multiplier factor had been notified in a more rationalized manner. True typed copy of the notification dated 12.01.2021 is appended as Annexure P-10. The above notification dated 12.01.2021 has been superseded firstly by the notification dated 12.03.2021 and finally by notification dated 01.04.2021. True typed copies of notification dated 12.03.2021 is appended as Annexure P-11 and notification dated 01.04.2021 is appended as Annexure P-12. Thus, as per the latest notification, the petitioner would entitled to a Multiplier Factor of Two.”

(ii) Replace Para 10(ii) with the following para-

"Because the impugned notification dated 30.10.2014 is arbitrary in nature and hence violative of Article 14. The notification is arbitrary in nature as it suffers from the vice of non application of mind. The notification is based upon the decision taken by the Government as reflected in the order dated 16.10.2014. In the said order, no reasons whatsoever are forthcoming based upon which the distance of 10 kilometers was determined for pegging the Multiplier Factor done to One and to further curtail the same at 1.25. The guideline for determining the Multiplier Factor is provided in the First Schedule itself and that is the distance of the land / project from the urban area. The objective is to provide a higher Multiplier Factor to lands which are situated the farthest from urban areas. In other words, it is respectfully submitted that the State Government is obligated to consider the remoteness of an area before notifying the Multiplier Factor. However, while issuing the impugned notification, respondent no 2 has failed to apply its mind on relevant factors such as remoteness, population, etc. The arbitrariness in the impugned notifications is further fortified from the subsequent actions of the State Government itself. The impugned notification stands superseded by the notification dated 01.04.2021 wherein the State Government has culled out its difference in the remoteness of land situated in the periphery of Municipal Corporation and Municipal Councils/ Committees/ Nagar Panchayats. Thus the State Government has now notified a Multiplier Factor of 1.5 for all lands situated upto 5 kilometers of the local limits of a Municipal Corporation. For lands beyond 5 kilometers, the Multiplier Factor has been notified as Two. Another category which has been created is of lands in periphery of Municipal Councils / Committees / Nagar Panchayats. In this category, a Multiplier Factor of 1.5 has been notified for lands situated within 2 kilometers of such Municipal Councils / Committees / Nagar Panchayats and for those lands beyond 2 kilometers, the factor has been notified as Two. It is further submitted that the impugned notification is arbitrary also on the ground that it creates an arbitrary classification between lands situated within 10 kilometers of Municipal limits and those beyond it without any intelligible differentia. In the humble submissions of the petitioner, the third ground for arbitrariness is that the State Government was under a statutory obligation to notify the maximum Multiplier Factor as Two and it could not have curtailed/restricted the maximum applicable factor at 1.25. The notification is thus against the statutory provisions of the 2013 Act."

(iii) *Replace the words 'instructions dated 16.10.2014' occurring in para 10(iii) with the words 'notification dated 30.10.2014'.*

(iv) *Insert the following additional paras after para 10(iii).*

"(iv) Because the purpose for which the land was sought to be acquired by the State Government no longer subsists. Respondent no. 2 had initiated the process of acquisition for the purpose of setting up a toll plaza. However, the State Government has already established another toll plaza in proximity to the petitioner's land and as such the Government does not have any project or plan for setting up the toll plaza upon the petitioner's land. Moreover, the Hon'ble Chief Minister and various other Cabinet Ministers have publically announced that no new toll plaza would be erected in the State of Punjab."

(v) In the heading as well as prayer clause, the words 'instructions/orders dated 16.10.2014 may be replaced by the words 'notification dated 30.10.2014

(vi) Permit appropriate amendments in the list of dates and events. "

9. However, for the reasons to be assigned hereinafter, the above asked for leave to amend the writ petition is declined. Principally for the reason, that since this Court upholds the constitutionality or the vires of Section 26 of the 'Act of 2013' and that too, on the able plank, that the said Section, does contain, all the relevant parameters, thus for ensuring the determination of fair and reasonable compensation to the acquired lands. Resultantly when thereby there would be no unjust or capricious expropriation of the acquired estates nor when thereby there would be any breach of the mandate of Article 300 A of the Constitution of India. In consequence, the constitutionality and/or the vires of the said statutory provision cannot become rather subjected to any lawful assault. Predominantly also when all the relevant parameters, as enshrined in the said Section are para materia to the ones as become enshrined in the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894'). The enshrinements therein of the said

statutory parameters, thus for fair and just compensation being determined by the authorities concerned, when rather are akin to the ones spelt in the 'Act of 1894', thereby it cannot be said that the apposite statutory parameters are arbitrary or whimsical nor thereby this Court can conclude, that the vires of the said provision is required to be tested on the touchstone of the mandate of Article 300 A of the Constitution of India, thus becoming breached.

10. Since in terms of Sub Section (2) of Section 26 of the 'Act of 2013', notification (supra), has been issued and has been applied by the Collector concerned. Therefore, when mandate thereof rather became enjoined to be as such complied with by the Collector concerned. Necessarily any compliance as made thereto by the Collector in his making the impugned award, thus also is both just and reasonable.

11. Be that as it may, even if there was any departure from the statutory mandate regulating the determination of just and fair compensation, thus by the Collector concerned. Therefore, even in the above event, the award as made by the Collector concerned, was amenable for becoming challenged before the statutorily designated authority, in whom became vested the power to make enhancement of compensation amounts, in sums thus higher than the amounts, as became determined by the Collector concerned. It appears the challenge as made to the apposite notification, is, through the asked for leave being granted in CM No. 12974-CWP-2023 for thereby amendment(s) (supra) becoming incorporated in the writ petition (supra). However, the said endeavour is but a clever subterfuge rather deployed by the

too, without as stated (Supra), the petitioner recouring the statutorily prescribed remedy for seeking enhancement of compensation, before the designated statutory authority, through hers filing thereof an enhancement petition. If the said ploy becomes vindicated by this Court, thereby this Court would be untenably, through exercising jurisdiction on the writ petition, thus untenably supplant the jurisdiction vested in the statutorily designated Authority, thus to receive and to decide petition(s) seeking enhancement of compensation, over the amounts as became determined under the impugned award.

12. Even otherwise, the parameters as enshrined in the apposite notification are deemed to have been made with an objective contemplation by the authority concerned. The said presumption of an objective application of mind being made by the Executive, in its drawing the relevant notification, remains thoroughly undisplaced through adduction of any material rather suggestive, that it has been drawn arbitrarily or capriciously, hence without bearing in mind all the relevant parameters. Even otherwise if to the acquired lands, a parameter different than the one as detailed in the apposite notification, was to be applied yet then too, the said factum was a disputed question of fact, and thus became un-amenable for becoming raised or becoming decided by this Court. Contrarily, any misapplication of the regulatory parameters as set forth in the apposite notification, thus could have been taken as a ground for seeking modification of the apposite award, thus through seeking applications to the acquired estate rather of a better parameter. The said endeavour could have been made only before the statutorily designated authority, thus bestowed with jurisdiction, for

thereons. Since the above remedy remains unrecoursed, therefore obviously any disputed question of fact with respect to the misapplication to the acquired estates, of the relevant governing norms or of application thereto for a better regulatory norm(s), but obviously cannot be either embarked upon nor can be adjudicated upon by this Court.

13. After declining leave to incorporate the asked for amendment(s), the CM-12974-CWP-2023 as well as the main petition CWP-24548-2015, both are dismissed.

Final order of this Court.

14. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned award is maintained and affirmed.

15. However, liberty reserved to the petitioner to recourse such remedies, if yet available under law. In case the petitioner files a petition for enhancement and which may be time barred, thereupon, the said petition may become accompanied by an application cast under Section 14 of The Limitation Act, 1963 and on such an application, the authority concerned, may pass such orders, as deemed fit and appropriate, in accordance with law.

16. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

17.08.2023

kavneet singh