

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CWP-2670-2017
Date of decision: 11.09.2023

GULZAR SINGH @ GULZAR SINGH KAINTHPetitioner

VERSUS

STATE OF PUNJAB & ANOTHERRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Jaideep Verma, Advocate
for the petitioner.

Mr. Saurav Verma, Addl. A.G. Punjab
for the respondent-State.

Mr. G.N. Malik, Advocate
for respondents No.4 and 5.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 22.06.2015 (Annexure P-11) as well as the order dated 04.03.2016 (Annexure P-13) passed by the Principle Secretary to Government of Punjab, Department of Tourism & Cultural Affairs, Punjab whereby the objections filed by the petitioner against the notification issued by the Government of Punjab bearing No.10/70/14-4TC/66 dated 01.10.2014 under Section 4 Sub Section 1 of the Punjab Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1964 (for short “the

Act of 1964”) and the subsequent proposal under Section 4 (3) of the Act of 1964 had been rejected. A further prayer has been made by the petitioner that respondent No.2 should be directed to determine the status of the petitioner so that his claim for adequate and appropriate compensation in terms of Section 27 of the Act of 1964 could be considered.

2. Briefly summarized the facts of the present case are that one Makbara Jamal Khan is comprising of Khewat/Khatauni No.253/317, Khasra No.94, measuring 2 kanal and 9 marla is situated in the Revenue Estate of Village Chotti Haveli, Tehsil and District Rupnagar, Punjab. The same is owned by the Punjab Wakf Board as per the revenue record. An outer unused, undeveloped surrounded area measuring 881 Sq. yards is stated to be not attached with the Makbara building in any manner whatsoever. The petitioner claims that the Wakf Board had leased out the said area to the petitioner as well as to Manmohan Singh son of Raghbir Singh, vide Allotment Order No.173/90/25239 dated 22.12.1990 for residential and other purposes. The petitioner and his co-lessee have mutually partitioned the aforesaid property vide agreement dated 21.12.1990 and the major portion of the said property was given to the petitioner. A construction was raised by the petitioner after obtaining permission from the Wakf Board and also by seeking sanction of the building plan from the Municipal Council, Rupnagar, as it then was and the petitioner has been regularly paying the House Tax and other Taxes.

3. A preliminary notification under Section 4 (1) of the Act, 1964 was issued by the respondent State of Punjab on 01.10.2014 declaring the abovesaid Makbara as a Historical monument and as protected property. A final notification No.10/70/14-4TC/386776 dated 08.01.2015 was

subsequently issued by the Government of Punjab under Section 4 (3) of the Act of 1964. The petitioner, thereafter submitted a detailed representation dated 16.01.2015 to the respondent-authorities to consider his status as actual occupant of the property and to pay compensation to the petitioner as is admissible to him under the Act of 1964. However, the above said representation was wrongly considered as an objection against the notification for declaring the Makbara as a historical site and the same was declined. It is averred that the petitioner is not against the above said declaration of Makbara as a protected monument of imminence and his grievance is restricted only to consider the status of the petitioner as actual occupant of the property as he was put in possession thereof under a valid agreement and had raised the construction after seeking due approvals from the competent authority. It is further averred that the lease was executed in favour of the petitioner way back in December, 1990 and that he had been regularly paying the lease amount to the Wakf Board. A Legal Notice dated 27.07.2015 was subsequently served by the petitioner to the respondents, however, the same was rejected vide communication dated 04.03.2016 without applying any rationality or objectivity.

4. A separate written statement had been filed by the Punjab Wakf Board i.e. respondents No.4 and 5 wherein, while acknowledging the factum of execution of a lease deed, it was contended that the alleged partition of the property had never been carried out with the permission or approval of the Wakf Board. It is further averred that the lease agreement was only for a period of one year and that the petitioner has not paid any rent to the Punjab Wakf Board since 30.04.2014. The Wakf Board claimed to be the owner of

the suit property. No challenge to the notification of the area as a protected monument was ever placed even by the Wakf Board.

5. A copy of the reply by way of affidavit of respondent No.3- Navjot Pal Singh Randhawa, (PCS), Director, Cultural Affairs, Archives & Museums, Punjab has been handed over today in Court as the said reply was missing in the paper book even though a replication had already been filed by the counsel for the petitioner. It has been averred in the above said reply that even though the petitioner claims to be the lessee of the property in question, however, the stand of Wakf is that the lease has not been continued and that would in fact be an *inter se* dispute amongst the writ petitioner as well as the Punjab Wakf Board as regards determination of the tenancy & computation of the compensation as well as disbursement thereof. It was also averred that there is no document on record on the basis whereof it can be said that the construction was raised after obtaining due permissions. Copy of the sanction attached by the petitioner alongwith the present petition cannot be ipso facto accepted since the Municipal Council has not been impleaded as a party and veracity of the said document is yet to be determined. It was further averred that in the absence of renewal of lease, the petitioner has no right to raise any objection to the notification or to maintain any other claim.

6. Counsel appearing on behalf of the petitioner as well as respondents No.4 and 5 do not dispute the notification that has been issued by the Government of Punjab and the controversy raised before this Court by the petitioner is only with respect to the determination of right to compensation in terms of Section 27 of the Act of 1964. It is also evident that the petitioner-Gulzar Singh had filed objections on 16.01.2015 wherein

the petitioner was seeking determination of his status and for disbursement of compensation against the construction raised by him in accordance with law. Statement of the Estate Officer of Punjab Wakf Board was recorded by the respondents wherein it is informed that the lease period of the land was over and there was no continued lease in favour of the petitioner and that in the absence of any right in terms of Section 51, as amended by the Wakf Amendment Act, 2013, the petitioner would have no *locus standi* to raise any objection to the notification and/or that the question of the subsistence of lease. Inter se rights between the petitioner and Wakf Board are required to be determined by the concerned Tribunal as per law. The same stand has also been maintained by the respondents while submitting a reply to the legal notice.

7. Counsel for the petitioner contends that Section 27 of the Act, 1964 makes a provision for compensation for loss of damage and that any owner or occupier of land who has sustained any loss or damage or any diminution of profits of the land, by reason of any entry of this Act, is entitled to be compensated by the Government for such loss, damage and diminution of profits. A detailed procedure under Section 28 of the said Act of 1964 has also been provided for assessment of the market value and/or the compensation thereof. He contends that the petitioner having raised the construction would be deemed to be an occupier of the land and that he is entitled to compensation for the loss sustained by him on account of the notification being issued and the petitioner being deprived of his constructed residence is eligible for compensation under the provisions of the Act of 1964.

8. The aforesaid prayer made by the petitioner is opposed to by the counsel appearing on behalf of the respondent-State as well as the Wakf Board by contending that the lease in question had never been renewed in favour of the petitioner and that in absence of any renewal of lease, he cannot claim flow of any rights and/or seek any compensation from the State Government. Learned counsel also contends that there is a dispute with respect to the area for which the lease/tenancy had been created by the Wakf.

9. While, counsel appearing on behalf of respondents No.4 and 5-Punjab Wakf Board, additionally contends that a perusal of Annexure P-5 i.e. the lease agreement shows that the area leased out to the petitioner was only 193 sq. yards and that the claim made with respect to the lease of 881 sq. yards. is factually incorrect and is not supported from the documents on record. He further contends that the petitioner did not pay the lease/rentals and the lease in question was not renewed. Consequently, he cannot be termed as an occupier of the property and that only the Wakf Board is the owner and occupier of the premises in question and is entitled to the disbursement of compensation as per Act of 1964.

10. Learned State Counsel on the other hand has contended that the petitioner not being a lessee or in occupation of the premises in question, for want of renewal thereof, has no subsisting right to claim compensation and further that no claim has been lodged with the State Government by the Wakf Board which claims to be the owner of the property in question. Hence, there was no occasion for the Government to have disbursed any compensation or assessed any loss in the absence of any damage being claimed.

11. I have heard learned counsel appearing on behalf of the respective parties and by their able assistance have gone through the documents appended alongwith the present petition.

12. The publication of the notification with respect to the Makbara as a protected area is neither under challenge nor a subject matter of dispute. Owner has been defined under Section 2 (h) of the Act, 1964 while the occupier has not been so defined even though Section 27 contemplates grant of compensation to the owner/the occupier of the premises in question. It remains undisputed as to whether the lease was executed in favour of the petitioner on 22.12.1990 for a total measuring 881 sq. yards. The document Annexure P-5 is the No Objection Certificate granted by the Punjab Wakf Board to the petitioner for raising construction and that the said construction could be raised over an area measuring 193 sq. yards only. The allotment letter Annexure P-2, however, describes the area as 381 sq. yards and not 881 Sq. yards as claimed. Hence, the material about lease of 881 sq. yards is not available on Court file. The approval for construction was for a period of one year. It has remain undisputed that the construction in question had been duly raised by the petitioner.

13. Section 27 of the Act of 1964 mandates payment of compensation to the owner/occupier of the land who has sustained such loss/damage. The relevant extract of Sections 27 and 28 providing for the procedure for assessment of market value of compensation is reproduced hereinbelow:

“27. Compensation for loss or damage

Any owner or occupier of land who has sustained any loss or damage or any diminution of profits from the land

by reason of any entry on, or excavations in such land or the exercise of any power conferred by this Act, shall be paid compensation by the Government for such loss, damage or diminution of profits.

28. Assessment of market value or compensation

1. The market value of any property which the Government is empowered to purchase at such value under this Act, or the compensation to be paid by the Government in respect of anything done under this Act, shall, where any dispute arises in respect of such market value or compensation, be ascertained in the manner provided in sections 3, 5, 8 to 34, 45 to 47, 51 and 52 of the Land Acquisition Act, 1894 (Central Act I of 1894), so far as they can be made applicable:

Provided that when making an enquiry under the said Land Acquisition Act, the Collector shall be assisted by two assessors, one of whom shall be competent person nominated by the Government and one person nominated by the owner, or, in case the owner fails to nominate an assessor within such time as may be fixed by the Collector in this behalf, by the Collector.

2. Notwithstanding anything in sub-section (1) or in the Land Acquisition Act, 1894 (Central Act I of 1894), in determining the market value of any antiquity in respect of which an order for compulsory purchase is made under sub-section (3) of section 23 or under sub-section (1) of section 26, any increase in the value of the antiquity by reason of its being of historical or archaeological importance shall not be taken into consideration.”

14. Even though the case of the respondent-State is that the lease in question had not been renewed in favour of the petitioner and as such he is

not eligible for grant of compensation in view of amended Section 51 of the Wakf Act, 2013. However, a perusal of the said Section shows that the said Section only renders the lease of an immoveable property executed by the Wakf Board without the prior sanction of the Board as void. The said provision would thus not apply to the facts of the present case inasmuch as it is not the case set up by either the Wakf Board or the State Government that the execution of the lease in favour of the petitioner was not with the prior sanction of Board.

15. It is well settled legal position that where an expression is not defined in the statute, its plain meaning/literal meaning should be accepted, if such meaning does no violence to the statute.

16. As per Warton Law Lexicon, 15th Edition, Page-1180, "Occupation"/Occupier has been defined as under:-

"Occupier includes,-

- (i) *Any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable.*
- (ii) *An owner in occupation of or otherwise using his land or building.*
- (iii) *A rent-free tenant of any land or building, and*
- (iv) *Any person who is liable to pay to the owner damages for the use and occupation of any land or building."*

17. An occupier is thus one who lives in or uses the premises/building etc.

18. It is further evident that the notification under the Act, 1964 was issued in October, 2014 and that the petitioner had undisputedly been paying

the rental till April, 2014 as per the stand of the respondents themselves. Hence, the contemporaneous evidence and the admission by the respondents in their written statement shows that the petitioner was lessee in possession of the property and rent was being duly received by them till 30.04.2014. He was legally put in possession of land and given permission to raise construction. There is no averment raised by the respondents-Wakf Board about time and manner by which possession of the property in question had been taken over by the Wakf Board from the petitioner. In the absence of any such averment, it cannot be deemed at this stage that the petitioner was not an occupier of the premises in question. Acceptance of the lease money till 30.04.2014 and acknowledgment thereof clearly shows that the petitioner continued to be a lessee and in established & settled possession of the property. The respondents No.4 and 5 have not placed on record any document pertaining to cancellation or termination of lease and/or any order passed by the competent authority for termination of such lease agreement. The stand of Wakf Board that lease was only for one year in 1990 and not renewed is belied by their own act and admission of receiving rent till April, 2014. The lease thus is extended by the parties.

19. Having noticed the aforesaid facts which are borne out from the perusal of the record, it is evident that the respondent-authorities have failed to take into consideration the status of the petitioner and have rather relied on the statement of the respondent about the expiry of the period of lease. The compensation is being claimed under the provisions of Act of 1964 and a determination of occupier has to be in terms of the said Act. In the absence of termination of any lease and the admission by the respondents of continued submission of rent even till 30.04.2014 i.e. soon before the

notification was issued by the respondents under Section 4 (1) and Section 4 (3) of the Act of 1964, reflects the petitioner to be *prima facie* an occupier of the land as on the date when the said notifications were issued. The question of apportionment of compensation is another aspect which is required to be settled inter se between the respondents No.4 and 5 and the petitioner herein. However, merely because there is an inter se dispute between the occupier and the owner does not absolve the respondents from computing the compensation which is to be paid to the person aggrieved.

20. It is also noticed that the impugned order dated 22.06.2015 (Annexure P-11) and the communication dated 04.03.2016 (Annexure P-13) is not an order in terms of Section 27 of the Act of 1964. Hence, the said order will have no bearing on the right of the petitioner/occupier in seeking determination of compensation.

21. In view of the aforesaid, the present petition is accordingly disposed of with liberty to the parties i.e the petitioner and/or the respondents No.4 and 5 herein to move an appropriate applications/petition before the respondent No.2 i.e. the Principle Secretary, Department of Tourism and Cultural Affairs, Government of Punjab for assessment of compensation in terms of Section 27 of the Act of 1964.

22. In the event of any such application being preferred by the petitioner/respondents No.4 and 5, an appropriate decision shall be taken by respondent No.2, after affording an opportunity of hearing to the respective parties and preferably within a period of 06 months and without being influenced by its earlier orders which are non contextual. The determination of compensation shall, however, be without prejudice to the respective rights of the petitioner and respondents No.4 and 5 to seek apportionment of such

compensation in the manner known to law. The time during which the proceedings have remained pending before Courts shall be computed in favour of petitioner against any plea or delay, laches or limitation.

Disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 11, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No