

103**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****CR No. 7312 of 2019 (O&M)****Date of Decision: 14.03.2023**

M/s Vatika I.T. Parks Private Limited

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. A.S. Chadha, Advocate &
Mr. S.K. Biriwal, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Article 227 of the Constitution for setting aside the impugned order dated 16.09.2019, whereby Id. Additional District Judge, Faridabad (for short “ADJ”) rejected the application of petitioner to treat the reference under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (here-in-after referred as “the New Act”), which was initially filed under Section 18 of the Land Acquisition Act, 1894 (for short “the Old Act”): Further prayer is for quashing of the impugned Award of even date i.e., 16.09.2019, vide which the reference petition was also dismissed being “*not maintainable*”.

2. Facts are not in dispute.

3. State of Haryana issued a Notification dated 11.04.2013 under

Section 4 of the Old Act for acquisition of certain lands, including land of

petitioner situated in Village Sarai Khawaja, Hadbast No.3, Tehsil & District Faridabad, for public purpose and which was followed by a declaration dated 19.08.2013 under Section 6 thereof. However, the award was made by the Collector on 08.05.2015, under New Act.

4. Feeling dissatisfied with the award Dated 08.05.2015, a petition was filed before the collector on 04.06.2015, for making reference to the Court of competent jurisdiction under Section 18 of the Old Act. Taking into consideration the pleadings of both sides, issues were framed by Id. ADJ on 10.03.2016 and thereafter, parties led their evidence. At this stage, a doubt arose, as to whether reference made by the Collector is to be considered under Section 18 of the Old Act or as per Section 64 of the New Act?

Faced with the above situation, petitioner submitted miscellaneous application on 21.08.2019 for treating the reference along with consequent proceedings under New Act, but the same has been rejected by Id. ADJ, while passing the impugned order. On the same day, (vide separate impugned Award), Id. ADJ dismissed the reference petition also, being “*not maintainable*”.

5. It is contended on behalf of the petitioner that Id. ADJ while passing the impugned order as well as the Award of even date, committed grave error of law, in as much as the same are running *de-hors* the provisions of Section 24(1)(a) of the New Act and in support of his contention, learned counsel has relied upon the ***order dated 19.09.2019 passed in CR No. 5521 of 2019 (M/s Super Seals India Limited Versus the State of Haryana and others)***.

Also submitted that mentioning of Section 18 of the old Act was only on account of an inadvertence. Thus, being a minor typing error, Id. ADJ ought to have corrected the same and treated the reference petition under

Section 64 of the New Act, instead of relegating the petitioner for *de-novo* proceedings in such circumstances.

6. Learned State counsel, after obtaining instructions from the quarter concerned, is not able to controvert the pleas raised on behalf of the petitioner; rather fairly submitted that the order dated 19.09.2019 (*supra*), has attained finality, as the same was not further challenged.

7. Heard learned counsel for the parties and perused the paper-book.

8. Sole point for consideration of this Court would be:

As to whether in view of the facts and circumstances of the present case, impugned order dated 16.09.2019 as well as the Award of even date passed by Id. ADJ are legally sustainable?

9. In order to examine the controversy, it would be appropriate to extract the operative part of the impugned order, whereby Id. ADJ rejected the application of petitioner and which reads as under:-

“Perusal of record reveals that notification No. LAC(F) NTLA/2013/39 was published on 11.04.2013 in the Haryana Government Gazettee (Extra Ordinary) under Section 4 of the Old Act, 1894. Subsequent declaration under Section 6 of the Old Act, 1894 was published on 19.08.2013. The land of the petitioner was acquired for the public purpose namely construction of service road and drain cum footpath alongwith metro viaduct on the western side of Delhi Mathura road and parking on the eastern side of Delhi Mathura Road, under the Act. Land Acquisition Collector delivered award No.8 was pronounced on 08.05.2015 under new Act relying upon Section 24 of the New Act, 2013. It is clear that impugned Award was passed under new Act, 2013. The amendment sought will change the face of entire litigation. Even otherwise, there is no plea in the application that how he will bring his pleadings framed under Section 18 of the Old Act, 1894 now under New Act, 2013. It is pertinent to mention here that procedure for determining the market value of the land is

envisaged under Section 69 which is altogether different from Section 23 of the Old Act, 1894. The Court has gone through the citations relied upon by ld. counsel for the applicant i.e. Union of India Versus Santi Ranjan Dutta AIR 2008 Calcutta 106, Bahori versus Vidya Ram AIR 1978 Allahabad 299, State through SP New Delhi Versus Rattan Lal Arora, JT 2004(5) C 352, Raj Kishore Dass Versus Nilamani Dass AIR 1968 Orissa 140, Kumari Kumud Jin Versus Vijay Kumar 2017(3) RCR Civil and Vijaya Bank Versus Shyaml Kumar Lodh decided on 6.7.2010 by the Hon'ble Supreme Court. Keeping in view the facts and circumstances of present case, present citations are distinguishable to the facts of the present case.

In view of the above discussion, the application moved by applicant-petitioner is dismissed.”

A bare reading of the above extract reveals that proceedings for acquisition of the land in question were initiated under the Old Act; whereas the award was passed by the Collector on 08.05.2015, under New Act and ld. ADJ rejected the application for correction of nomenclature on the premise that “*T(t)he amendment sought will change face of entire litigation*”.

10. Here, it would be relevant to mention that ld. ADJ while dismissing the reference petition *vide* Award of even date, observed that “*the petitioner is at liberty to file objections under the New Act, 2013, if so advised, as per law.*” Meaning thereby, the petitioner did has a right for seeking reference under New Act but, since petition was filed under Section 18 of the Old Act; therefore, on that count, after a period of four years, the reference petition was dismissed as not maintainable and relegated the petitioner for taking recourse under the New Act.

11. Before proceeding further, it is necessary to re-capitulate Section 24(1)(a) of the New Act and which reads as under:-

“24. Land Acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—
(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all the provisions of this Act relating to the determination of compensation shall apply;
 ”

A perusal of clause (a) extracted here in above, reveals that “*where no Award under Section 11*” of the Old Act has been made, then “*all provisions*” of the New Act “*relating to the determination of compensation shall*” apply. Thus, in such a scenario, it can be safely observed that when acquisition proceedings were initiated under the Old Act, but the award was not made under Section 11 thereof; rather passed under the New Act, then “*all provisions*” of the latter Act shall be applicable “*relating to the determination of compensation*”.

12. There is no quarrel that under New Act, the determination of compensation would be at various stages viz.,

- (i) at the level of Collector (Section 23 & 28);
- (ii) by the Authority (Section 64 & 69);
- (iii) at the instance of interested persons, who failed to approach the Collector under Section 64 for seeking reference (Section 73);
- (iv) appeal to the High Court (Section 74).

13. Concededly, in the present case, under stage (i), the Collector passed an Award on 08.05.2015 and as such the next stage (ii) would be to make a reference before the Authority under Section 64 for determination of the compensation in terms of Section 69. It is not in dispute that initially, petition

was filed by the petitioner under Section 18 of the Old Act, but that seems to be inadvertently and this aspect of the matter is quite discernible from the application for seeking correction and paras 4, 5 & 6 of the same read as under:-

“4) It is further submitted that the petition for reference was made before the Land Acquisition Collector on 04.06.2015 and due to inadvertence and clerical omissions, the petition was moved under Section 18 of the Land Acquisition Act, 1894 whereas the petition should have been moved under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 hereinafter called the Act of 2013.

5. That the reference petition so submitted by the Land Acquisition Collector to this Hon’ble was established as it is and full-fledged trial without any objection took place. The petitioner submits that at this juncture when the matter after close of evidence by both the sides has come up for final decision, it appears that a doubt has arisen whether the reference so made by the Land Acquisition Collector could be entertained or treated under the Act of 2013.

6. It is in this context that the petitioner submits that mentioning of wrong section or repealed statute for the purposes of reference to this Hon’ble Court should not or ought not be treated as invalid reference because the mentioning of wrong section does not by itself invalidate the judicial proceedings. The Hon’ble Court is competent to take cognizance of the section and Act applicable at the time of deciding the matter.”

After going through the contents of above paragraphs, there remains no doubt that mentioning of Section 18 under Old Act was due to inadvertence and as such, could be termed a non-issue.

14. Even otherwise, mere mentioning of Section 18 of Old Act by the petitioner or at the level of Collector would not be detrimental for adjudication of the controversy ; nor it shall change the nature of proceedings in any manner; rather at best, it could be termed as quoting a wrong provision of law. *A fortiori*, it is quite elementary that mere mentioning of a wrong provision is not

simply a curable defect, which can be rectified at any stage, before the Authority becomes *functus officio*. Hence, such type(s) of corrective step(s) shall neither amount to amendment of the pleadings; nor it would be construed as changing the face of litigation in any manner; rather the same is in consonance with the legal provisions.

15. In a similar controversy i.e. *M/s Super India case (supra)*, where acquisition proceedings were initiated under the Old Act; the Award was made under the New Act; but, the Id. ADJ after recording the evidence of both sides, returned the reference filed under Section 18 of the Old Act, with liberty to the petitioner (therein) to make a reference under the New Act; however, the Coordinate Bench (Respected Sister Bahri, J.) while setting aside such a course, observed as under:-

“In the present case, after entertaining the reference under Section 18 of the Old Act, the procedure as contemplated under Section 65 of the New Act has been followed and only before passing of the final order, this reference has been returned back by giving liberty to the petitioner(s) to make reference under the New Act, 2013.

After receiving reference under Section 64 of the New Act, Reference Court has to determine the compensation by following the procedure under Section 23 of the New Act and determine the market value of the land and consider other factors as contained in Section 69 of the New Act. It is further observed that the procedures of the Old act, 1894 and New Act, 2013 are materially different from each other.

This Court is of the view that even if, procedures are different, in the present case, petitioner/appellant has led evidence for enhancement of the compensation and after leading such evidence, the Reference Court is required to follow the procedure under the relevant provisions of the New Act, 2013.

Hence, in order to save time of the Court as well as the litigant, this Court suo-motu proceeds to exercise powers under the revisional jurisdiction. Resultantly, the impugned order(s) dated

25.07.2019 are set aside and the reference under Section 18 of the Old Act of 1894 for enhancement of the compensation of the acquired land is being converted into the reference under Section 64 of the New Act of 2013. A direction is now being given to the Reference Court to proceed in accordance with the New Act of 2013 from the stage of recording the evidence. However, liberty is granted to the petitioner(s) to make any application in accordance with law, for recalling of any other order, which has/have been passed with respect to the acquired land of village Anangpur, H.B. No.2, Tehsil & District Faridabad”

16. Still further, ld. ADJ while passing the impugned Award dated 16.09.2019 dismissed the reference petition itself, solely on the ground that it is “not maintainable” without appreciating the impact of Section 24(1)(a)[*ibid*]. For brevity, the relevant part of the impugned Award is reproduced here as under:-

“20. Now it is clear that Land Acquisition Collector passed present Award under the provisions of new Act, 2013. In other words, the impugned award was not passed under Section 11 of the Land Acquisition Act, 1894. The Land Acquisition Collector awarded the 100% acquisition charges which falls in the category of solatium.

21. In such a situation it was incumbent upon the petitioner to file the reference under Section 64 of the New Act, 2013 against the impugned Award. But the petitioner of the present petition filed the objections under section 18 of the Old Act, 1894. Under Old Act, 1894 the reference Court while determining the compensation is duty bound to consider the factors mentioned under Section 23. Under new enactment, the Court/Authority is duty bound to determine the market value of the land and consider other factors as mentioned under Section 69 of the New Act, 2013. The provisions of Old Act, 1894 and new Act, 2013 in respect of determination of the value of the land materially different from each other. Pleadings under Section 64 of the new enactment are required to be made in consonance with its provisions and not in accordance with the provisions of Old Act, 1894. Therefore, this

Court/Authority is of the opinion that the objections under Section 18 of the Old Act, 1894 filed by the petitioner and reference made to this Court by Land Acquisition Collector are not maintainable.

20 (sic 22). As a result of above discussion, this Court is of the opinion that objection filed by the petitioner against the impugned award dated 08.05.2015 is not maintainable. Land Acquisition Collector made reference without looking into the provisions of new Act. Therefore, the reference petition cannot be answered in the absence of proper pleadings. However, the petitioner is at liberty to file the objections under the New Act, 2013 is so advised, as per law. Accordingly, the reference petition stands dismissed and answered leaving the parties to bear their own costs.

21(sic 23). Before parting with this award Court this Court with heavy heart is of the view that the petitioner acted ignorantly and it appears that it was not having knowledge of the latest enactment. It had not been properly advised. Even Land Acquisition Collector acted in a mechanical manner and forwarded the reference petition to this Court under Section 18 of the Old Act, 1894. It has consumed the valuable time, money, energy of the petitioners as well as of all the concerned quarters of the State. Memo of cost be prepared accordingly. Reference file be consigned to records.”

A perusal of the penultimate paragraph (*supra*) reveals that Id. ADJ expressed unhappiness “*with heavy heart*” that “*petitioner acted ignorantly*” and “*was not having knowledge of the latest enactment*” and “*had not been properly advised.*” In view of the facts and circumstances of the present case, there is no hesitation to observe that instead of making such remarks, Id. ADJ ought to have treated the reference under Section 64 of the New Act and determined the compensation in terms of Section 69 thereof, being the appropriate Authority.

17. In view of the discussion made here-in-above, this Court is of the considered opinion that where acquisition proceedings have been initiated under

the Old Act and the award is made under the New Act; then, for determination of compensation, all provisions of the latter Act shall apply. It is also observed here that in a situation like present one, the Collector shall make a reference to the appropriate Authority under Section 64 of the New Act and there is no relevancy of Section 18 of the Old Act for this purpose.

Also clarified that even if, inadvertently; or by mistake, the reference is mentioned under Section 18 of the Old Act, the same has to be treated under Section 64 of the New Act and the appropriate Authority would be under obligation to determine the compensation in terms of Section 69, thereof.

Needless to say that in case, the reference so made is lacking any information, the appropriate Authority would be fully empowered to direct the Collector for taking necessary step(s) in terms of Section 65 of the New Act.

18. Resultantly, the irresistible conclusion would be that the impugned order dated 16.09.2019 as well as the Award of even date are result of failure to exercise jurisdiction in the *lis*, by Id. ADJ; hence, not legally sustainable and the question posed in Para 8 is answered accordingly.

19. Consequently, there is no option except to allow the petition; therefore, present petition is allowed. Impugned order dated 16.09.2019 as well as the Award of even date are set aside.

The matter is remitted back before the appropriate Authority to treat the reference filed by the petitioner under Section 64 of the New Act and proceed further expeditiously, in accordance with law.

14.03.2023
SN

(MAHABIR SINGH SINDHU)
JUDGE

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