

(2003) 09 P&amp;H CK 0012

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Regular First Appeal No. 847 of 1983

Puran Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

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**Date of Decision:** Sept. 17, 2003**Acts Referred:**

- Land Acquisition Act, 1894 - Section 25

**Citation:** (2003) 135 PLR 871 : (2004) 2 RCR(Civil) 228**Hon'ble Judges:** Hemant Gupta, J**Bench:** Single Bench**Advocate:** N.S. Sodhi, for the Appellant; Ashok Bhardwaj, Assistant A.G., for the Respondent

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**Judgement**

Hemant Gupta, J.

The appellant is aggrieved against the award dated 9.4.1983 passed by the learned Additional District Judge, Ferozepur in a reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter to be referred to as the Act).

2. Vide notification dated 2.11.1978, u/s 4 of the Act, land measuring 51 acres 5 Kanals 10 Marias was acquired for a public purpose. The Land Acquisition Collector vide its award dated 21.5.1979 has assessed the compensation of the acquired land at the rate of Rs. 30,000/- per acre for Block-A; Rs. 25,000/- per acre for Block-B; Rs. 22,500/- per acre for Block-C Rs. 18,000/- per acre for Block-D Rs. 16,000/- per acre for chahi Nehri; Rs. 15,000/- per acre for Nehri; Rs. 4,000/- per acre for Banjar Qadim; and Rs. 3,000/- per acre for Ghair Mumkin. The claimant dissatisfied with the amount of compensation sought reference u/s 18 of the Act for determination of the market value. The appellant claimed compensation at the rate of Rs. 300/- per square yard which was alleged as the market value of the acquired land.

3. The learned trial court framed issue No. 1 A to the effect the claimant is barred to file claim as mentioned in the preliminary objection No. 1 of the reply. The State

Government has examined RW1 Harnam Singh Patwari in support of such issue. He has deposed that he was posted as Patwari in the Colonization Department at Bhatinda. Notices meant for Bachan Singh, Gurdial Singh and Puran Singh sons of Alia Singh, Ex.R.1 bearing signatures of Shri S.K. Kakkar the then Land Acquisition Collector was served upon Sarwan Singh son of Puran Singh in the presence of Om Parkash employees. He has also stated that another summons Ex.R2 in the name of Puran Singh son of Alia Singh regarding the land under mortgage with Iqbal Singh bearing signatures of Shri S.K. Kakkar Land Acquisition Collector were also received by Sarwan Singh son of Puran Singh in the presence of Om Parkash. He has further stated that Puran Singh claimant has not filed any claim after the service of notice u/s 9 of the Land Acquisition Act. Om Parkash, the attesting witness of service of summons upon Sarwan Singh has been examined as RW2. On the other hand, the claimants have examined AW1 Jaspal Singh, the clerk working with Shri Ashwani Kumar Dhingra, Advocate engaged by Puran Singh and others. Puran Singh has himself appeared as AW2. The learned Additional District Judge after examining the evidence held that the filing of claim by Puran Singh before the Land Acquisition Collector has not been established and thus, answered issue No. 1-A in favour of the respondents and dismissed the reference. It is the said award passed by the learned Additional District Judge, which is impugned in the present appeal.

4. Learned counsel for the appellant has vehemently argued that from the evidence on record it is evident that the claimant appellant has objected to the award and has also filed a claim application which is produced as Mark-A. It is submitted that since the record of the office of the Land Acquisition Collector was not properly kept, therefore, the claim of the appellant is not part of the file produced before the court. It is further contended that there is no evidence that the claimant has refused to make such claim which was required to be proved by the respondents by way of positive evidence. It is further contended that the appellant Puran Singh was present at the time of announcing of the award as well as Shri Ashwani Kumar Dhingra, Advocate engaged by the appellant and has sought reference u/s 18 of the Act. The filing of reference itself shows that the award was not accepted. There is nothing on record to prove that the appellant has omitted to file claim u/s 9 of the Act. Once the appellant is proved to be present before the land Acquisition Collector, the claim can be said to be filed orally as there is nothing in the provisions of the Act which may warrant a filing of claim in writing. In any case, the court should have entertained the reference on merits in view of the facts and circumstances warranting the interference of claim by the claimants. The learned counsel for the appellant has relied upon a Division Bench judgment of Calcutta High Court reported as [Abhay Chand Mahatab Vs. State of West Bengal](#), and Special Land Acquisition Officer City Improvement Trust Board, Bangalor v. Chikkaboranna AIR 1968 Karn 319, apart from the Full Bench, judgment of this Court reported as Sher Singh v. Union of India (1983)85 P.L.R. 86 (F.B.).

5. To controvert the said argument of the learned counsel for the appellant, the learned State Counsel submitted that the respondents have failed to file claim in pursuance of the notice issued u/s 9 of the Act and it has been so found by the learned trial court. Therefore, without proof of filing of the claim application, the appellant is debarred from claiming amount in excess of the amount awarded by the Land Acquisition Collector.

The provisions of Section 25 of the Act as it existed prior to its substitution vide Act No. 68 of 1984 w.e.f. 24.9.1984 read as follows;-

"25. Rules as to amount of compensation.- (1) when the applicant has made a claim to compensation, pursuant to any notice given u/s 9, the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the collector,

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector."

6. A perusal of the statements of the witnesses produced by the respondent state would show that the said witnesses have been produced to prove the service of notice u/s 9 of the Land Acquisition Act on the claimants. The said notice has been received by Swaran Singh son of Puran Singh. A perusal of the statement of RW1 Harnam Singh Patwari who was assisting Land Acquisition Collector at the relevant time shows that the Land Acquisition File brought by the witness is not page marked. The record further shows that Puran Singh, one of the claimants appeared before the Land Acquisition Collector on 21.5.1979 and his name is entered at Sr. No. 29. He has not brought the receipt register of the office. However, he denied the suggestion that Puran Singh filed a claim before the Extra Assistant Acquisition Officer exercising the powers of Land Acquisition Collector and that claim has been purposely withheld. He has not said a word that the claimants before the Land Acquisition Collector have refused to make any claim in writing or orally. The Land Acquisition Collector who conducted the proceedings has also not been examined. On the other hand, the claimants has appeared as AW 2 who has deposed that he has engaged Sh. Ashwani Kumar Dhingra, Advocate for filing the objections and reference. He has deposed that Sh. Ashwani Kumar Dhingra, Advocate filed objections on his behalf before the Collector. Sh. Dhingra also filed objections before the Collector in connection with the land acquired. He has stated that he appeared before the Collector when the Collector announced the award and the collector has intentionally not produced file in this court, which was filed by him in PWD. Rest House, Fazilka. In cross examination, he has stated that he accompanied

his counsel Sh. Ashwani Kumar Dhingra to file objections in the Rest House. He further stated that he is an illiterate villager. AW1 Jaspal Singh is the clerk of Sh. Ashwani Kumar Dhingra, Advocate. He has deposed that Puran Singh claimant has engaged Sh. Ashwani Kumar Dhingra, Advocate for filing objections and reference before the Collector. He has stated that objections were filed on behalf of Puran Singh. He has brought the brief as well as the daily diary with him. A carbon copy of the objections was produced as mark A. Reference application was produced and exhibited as Ex.A2/I. He has further stated that the objections were filed on behalf of 10 persons and all these objections were got typed on 30.3.1979 and were filed on 3.4.1979. No receipt was issued in respect of those objections. The case was adjourned to 21.5.1979 and on that day award was announced.

7. In the list of persons who were present at the time of announcement of award as Ex.A1 name of Puran Singh is at S No. 29 whereas the presence of Sh. Ashwani Kumar Dhingra is recorded for self and for various other claimants excluding Puran Singh. On the basis of such evidence the question which arises is whether Puran Singh has engaged Sh. Ashwani Kumar Dingra, Advocate for the purpose of filing claim and reference. The other question which arises is that even if Sh. Ashwani Kumar Dhingra was not engaged whether Puran Singh has refused to file claim as required u/s 25(2) of the Act.

8. From the statement of AW1 Jaspal Singh, clerk to Sh. Ashwani Kumar Dhingra, Advocate and the statement of claimant. I am of the opinion that Puran Singh has, in fact, filed claim in pursuance of notice u/s 9 of the Act. Puran Singh claimant is an illiterate person. However, he accompanied Sh. Ashwani Kumar Dhingra, Advocate, before the collector. He has stated that the collector has intentionally not produced the objections in this court which were filed by him in PWD. Rest House, Fazilka, Jaspal Singh, clerk to Sh. Ashwani Kumar Dhingra, Advocate has produced daily diary maintained by Sh. Ashwani Kumar Dhingra, Advocate in ordinary course of his profession. There is entry of cases before the Land Acquisition Collect. A carbon copy of the objections has been produced which is marked A. It has, however, come on record that the objections were filed on behalf of other claimants including Sh. Ashwani Kumar Dhingra, Advocate, himself. It has also come in the statement of Harnam Singh Patwari as RW1 that the file of the Land Acquisition Collector is not page marked. Therefore, possibility of not maintaining the record properly cannot be ruled out. Failure to attach objections filed by the claimants with the record of the case may not be intentional but the record produced does not inspire confidence that it was maintained in proper manner. RW1 has not produced the Receipt Register as well. It has been stated by AW1 that no receipts are given. It is not the case of the state that the receipts acknowledging the receipt of objections is given. Therefore, I am unable to agree with the findings recorded by the learned Additional District Judge that the filing of the claim is not established. The learned Additional District Judge has returned such finding on the basis of the fact that Sh. Ashwani Kumar Dhingra, Advocate has not been examined, the best person to

depose regarding the filing of the claim. The diary has been produced by the clerk, who has deposed in respect of to the filing of claim as well as the claimant himself has deposed that he filed claim through Sh. Ashwani Kumar Dhingra, Advocate, therefore, I am not inclined to agree with the findings recorded by the learned trial court that the claim was not filed by the claimants.

9. Even otherwise, it was for the respondents to prove that the claimants have refused to make such claim or has omitted without sufficient reasons to make such claim. Provisions of Section 25(2) has come up for consideration in City Improvement Trust Board's case (supra). In the said case, reliance was placed upon State of Bihar v. Anant Singh, AIR 1964 Patna 83 to hold that before the bar u/s 25(1) of the Act is resorted to it must be proved to the satisfaction of the Court that the applicant had made no claim for compensation after a valid notice u/s 9 of the Act has been given to him. It must be strictly proved that the applicant has refused to make any claim or had omitted to make any claim before the Collector pursuant to any notice given u/s 9 of the Act. It is not enough to prove that the statement of claim in writing had not been filed before the Collector. What has to be proved u/s 25(1) is that the applicant had not made claims to compensation and not that the applicant had not filed statements in writing before the Collector. There is no obligation on the interested person to file statements in writing.

10. Subsequently, in Abhay Chand Mahatab's case (supra) it is held that the provisions of Section 25(2) is a penal and before the court debars a referring claimant from claiming compensation in excess of the amount awarded by the Collector, it must enquire strict proof of the fact that the applicant has refused to make a claim to compensation or has omitted without sufficient reason to make such claim. The court has held to the following:

"Even assuming that the claim petition was not filed, the question is whether in the facts and circumstances or the case the provisions of Section (2) is attracted. Section 25(2) is a penal section and before the court debars a referring claimant from claiming compensation in excess of the amount awarded by the Collector it must require strict proof of the fact that the applicant has refused to make a claim to compensation or has omitted without sufficient reason to make such claim. A claim to compensation has to be made pursuant to the service of the notice under Sub-section (2) of Section 9 which provides that the notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of the claims to compensation for such interests and their objections (if any) to the measurements made u/s 9. Further it provides that the collector may in any case require such statement to be made in writing and signed by the party or his agent. Section 9(2) therefore, does not require that the claim to

compensation has to be made in writing before the Collector, The claim may be made, in our opinion, even orally by the person interested by appearing before the Collector. This is clear from the provision of Sub-section (2) itself as it provides that the Collector may in any case require such statement to be made in writing and signed by the party or his agent. It is, therefore, incumbent upon the respondent to prove to the satisfaction of the court that no oral claim made by the appellant before the Collector either himself or through his authorised agent. In our opinion, it is not sufficient to prove only that no claim petition was filed by the appellant for the purpose of precluding him from claiming compensation in excess of the amount awarded by the Collector."

11. In view of above precedents, it was incumbent upon the respondents to prove that the claimants have refused to make a claim to claim compensation. There is no word in that respect. The claimant was present in person before the Collector and according to him his written objections were intentionally not attached with the file meaning thereby that at least there was no oral claim on behalf of the claimants.

12. Consequently, the findings recorded by the learned Additional District Judge holding that the claimant is barred to file claim in terms of Sections 25 of the unmended Land acquisition Act is not sustainable in law. Consequently, the award passed by the learned Additional District Judge dated 9.4.1983 is set aside. The learned Additional District Judge is directed to assess the market value of the land in accordance with the law expeditiously preferably within a period of 6 months from the date the parties appear before the learned trial court.

13. The parties through their counsel are directed to appear before the trial court on 14.10.2003.