

(2013) 05 P&H CK 0193

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 286 of 2013

Hakam Singh and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: May 22, 2013

Citation: (2013) 172 PLR 94

Hon'ble Judges: G.S. Sandhwalia, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: P.S. Jammu, for the Appellant; Deepak Balyan, Addl. A.G. Punjab and Mr. H.P.S. Ghuman for Respondent Nos. 2 and 3, for the Respondent

Judgement

Ajay Kumar Mittal, J.

The petitioners have approached this Court through the present writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondent No. 3-Land Acquisition Collector, PUDA, Bathinda to release the amount of Rs. 47,11,726/- alongwith interest for the land acquired in compliance with the order dated 22.7.2008, Annexure P. 1 passed by this Court in CWP No. 18007 of 2007 as they have already handed over the possession on 17.8.2011 to respondent No. 3. Briefly, the facts necessary for adjudication of the controversy involved, as narrated in the petition, may be noticed. The petitioners were owners in possession of the land comprised in Khasra Nos. 2199 (2-11), 2200 (3-10), 2201 (3-13), 2202 (8-3), 2220 (56-1) measuring 73 bighas 18 biswas situated at Baghu Road Bathinda as well as the land measuring 9 bighas 15 biswas in Khasra Nos. 2203 (3-4), 2204(2-0), 2205 (4-11). Total land measuring 240 (2-0) acres was acquired by the respondents for establishment of residential area 4th and 5th phase, Urban Estate, Bathinda and in this regard, notification u/s 4 of the Land Acquisition Act, 1894 (in short, "the Act") was issued on 6.10.2004. The notification u/s 6 of the Act was issued on 8.3.2005. Some of the co-owners of the acquired land filed certain writ petitions in this court which were dismissed. The petitioners were owners of the acquired land to the extent of 42 bighas. According to the petitioners,

Respondent No. 3 took possession of land measuring 37 bighas 11 biswas from them and regarding the remaining land measuring 4 bighas 16 biswas, the collaterals of the petitioners tried to create a dispute regarding possession and made various applications to respondent No. 3 not to release the amount of compensation. When the petitioners did not receive compensation, they filed CWP No. 18007 of 2007 in this Court. The said writ petition was allowed vide order dated 22.7.2007, Annexure P. 1 with a direction to the petitioners to hand over the possession of the land to the extent of their share to respondent No. 3 and respondents were directed to release the amount of compensation to the petitioners. The petitioners have approached respondent No. 3 a number of times for release of compensation qua land measuring 4 bighas 16 biswas but having received no response, they have filed the present writ petition.

2. In the reply filed on behalf of respondent Nos. 2 and 3, it has been stated that other share holders in the land in dispute had filed civil suit against the petitioners as well as PUDA regarding ownership of the land in their possession. It has been further stated that due to pendency of litigation in the civil court, compensation has not been released to any party but the same has been sent to District Judge, Bathinda vide letter dated 21.2.2013 u/s 31(2) of the Act.

3. After hearing learned counsel for the parties and perusing the record, we find that the amount as claimed in the writ petition cannot be released at this stage. It would be expedient to refer to relevant portion of Section 31 of the Act which reads as under:-

31. Payment of compensation or deposit of same in Court:

(1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

3. XX XX

4. XX XX.

4. Section 31 of the Act provides that the Land Acquisition Collector is under an obligation to offer compensation as determined under the award. Sub section (1) of Section 31 of the Act makes it clear that on the making of the award u/s 11 of the Act, the Collector is required to tender payment of the compensation awarded by him to the persons interested who are entitled on the basis of the award. The payment has to be released to them unless prevented by virtue of contingencies covered under sub section (2) of Section 31.

5. Sub section (2) of Section 31 enumerates the situations where the Collector is to deposit the amount of the compensation in the court to which a reference u/s 18 would be submitted. These eventualities are:

(a) if the persons do not consent to receive it; or

(b) where there is no person who is competent to alienate the land; or

(c) where there exists any dispute as to the title to receive the compensation or as to the apportionment of it.

6. The first proviso to sub section (2) stipulates that the person who is admitted to be interested may receive the payment under protest with regard to the sufficiency of the amount. The second proviso thereunder, however, creates a statutory bar in relation to the rights of the person who lays claim to the compensation and accepts the same without protest. He would be deemed to have waived his right to get higher compensation and his reference application in such an event would not be maintainable. Under the third proviso, the liability of the person who may receive the whole or any part of the compensation awarded under the Act subsists and is liable to pay to the person lawfully entitled thereto.

In the present case, the matter regarding ownership of the land in dispute has been referred u/s 31(2) of the Act to the District Judge, Bathinda. Accordingly, while disposing of the writ petition, it is directed that District Judge, Bathinda shall decide the issue relating to the disbursement of the amount in terms of Section 31(2) of the Act expeditiously and shall release the compensation amount in accordance with law.