

(2012) 05 P&H CK 0167

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 2218 of 2007

Smt. Maya and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: May 4, 2012

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 4, 6

Citation: (2012) 168 PLR 747 : (2013) 2 RCR(Civil) 518

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: D.D. Gupta, Addl Advocate General, Haryana, for the State, for the Respondent

Judgement

Rajesh Bindal, J.

Bunch of appeals pertaining to the acquisition of land, where notification u/s 4 of the Land Acquisition Act, 1894 (for short, "the Act") was issued on 19.7.2002 pertaining to the land of village Patti Gaddar, District Kaithal were decided by this court vide judgment dated 27.3.2009 passed in R.F.A. No. 5466 of 2008 - Kirpal Singh v. State v. State of Haryana, and the cases were remanded back to the learned Reference Court for fresh decision. After remand, the learned court assessed the market value of the acquired land vide different awards. Vide judgment dated 23.1.2012, this court decided the appeals against the awards passed by the learned Reference Court in the aforesaid case as well as appeals pertaining to notification u/s 4 of the Act issued on 11.11.2002. At the time of hearing of bunch of appeals, it came on record that though the State had impugned the award of the learned Reference Court, but the appeals had not been filed in all the cases. As the state cannot be selective in filing appeals, the position was sought to be clarified. It also came on record that though all the references before the court below were arising out of the same acquisition, but still those were decided by the court below in piece-meal on different dates and were not bunched together.

2. In judgment dated 23.1.2012, this court required the State to clarify the position and the Registry was also directed to put a note as to whether there are any instructions already issued to the learned courts below for deciding all the references arising out of the same acquisition together. It was observed as under:

26. Considering the facts, which have come on record in the present set of appeals where the State did not file appeal in all the land References, decided by the learned court below, pertaining to the acquisition in question, learned counsel for the State to clarify the position about the number of land references decided by the court below pertaining to the notification u/s 4 of the Act issued on 19.7.2002 and 11.11.2002 and the appeals filed in this court. In case the awards passed the References Court have been not challenged in all the cases, the reasons therefore may also be explained.

27. A photo copy of the order be given to learned counsel for the State by the Bench Secretary under his signatures.

28. A perusal of the office note of the Grouping Section shows that the learned court below decided the cases pertaining to the acquisition in question in piece meal. These were decided in small groups on different dates i.e., 31.1.2007, 28.7.2007, 1.4.2010, 1.5.2010, 3.5.2010, 1.6.2010, 16.7.2010, 2.8.2010, 1.9.2010, 1.10.2010, 2.11.2010, 3.1.2011, 1.3.2011 and 1.4.2011.

3. In response to the aforesaid notice to the State, affidavit dated 4.4.2012 was filed by land Acquisition Officer, Urban Estate, Panchkula along with some information regarding the cases filed and in the progress of filing and which had been filed earlier but pending with department for removing the objections raised by the Registry.

4. Considering the fact that the aforesaid affidavit filed by the State was not exhaustive, this court required the State to furnish the detailed information on 4.4.2012 by passing the following order:

Affidavit dated 4.4.2012 of the Land Acquisition Collector, Urban Estate, Panchkula filed in court is taken on record. Along with the affidavit, information regarding status of appeals arising out of land acquired vide notification regarding dated 19.7.2002 for Sector 18, Kaithal, has also been attached.

It has been stated that the learned court below vide award dated 31.1.2007, decided 95 references, against which 84 appeals filed by the State have been decided by this court removing objections raised by the Registry of this court.

As regards the award of the learned court below dated 30.3.2007 is concerned, it is mentioned that 46 references were decided, against which 45 appeals filed by the State have been decided by this court on 23.1.2012 and one appeal is yet to be re-filed after removing objections raised by the Registry of this court.

The appeals filed against all the references of the learned court below decided vide awards dated 28.7.2007 and 3.5.2010 have been decided by this court on 23.1.2012.

As per information given along with the affidavit, the present status of cases from Sr. Nos. 5 to 22 has not been mentioned.

The cases at Sr. No. 15 and 1922, though were decided by the learned court on 1.9.2010, 1.10.2010, 3.1.2011, 3.1.2011 and 1.3.2011, respectively, but it is stated that these are still in process for filing appeals in this court.

Learned counsel for the State seeks more time to furnish comprehensive information. Adjourned to 17.4.2012.

5. Today, a chart has been furnished in court. The gist of the same is extracted below:

Notification U/s. 4 dated 19.7.2002, U/s. 6 dated 17.7.2003 and Award No. 4 dated 16.7.2005 (Sector 18, Kaithal-P255

Notification u/s 4 Dated 11.11.2002, u/s 6 Dated: 7.11.2003 and award No. 8 dated 31.10.2005 (Sector 19-20), Village Patti Kaisth Seth.

6. A perusal of the aforesaid charts shows that 108 cases were lying either with the litigating department or with the office of the Advocate General, Haryana for re-filing after removing objections, whereas in 38 cases, the appeals had not been filed. The Registry had mainly raised following objections for returning the appeals filed by the State to be re-filed after removing the objections:

(i) Some error in short orders

(ii) incomplete addresses of the respondents

(iii) copy of the notification u/s 4 of the Act is not annexed; (iv) non-filing affidavit in support of the application for condonation of delay in filing/re-filing;

(v) non-filing of a typed copy of the short order; and

(vi) non-mentioning of the revenue estate concerned.

7. However, in most of the cases, the objections are incomplete addresses of the respondents or non-filing of affidavits in support of the applications for condonation of delay in filing/re-filing and non-filing of copy of notification u/s 4 of the Act.

8. These are not the cases in isolation, where problem regarding non-furnishing of complete addresses of the parties came across before this court. In many cases, it is generally seen that addresses are furnished like "Ram Singh son of Sham Singh, resident of Kaithal". In some cases, even father's name is also not mentioned, whereas in some cases addresses are given "c/o the counsel for the party", who later on states that he does not have the address of the party. This results in delay in service of notices on the respondents-defendants either in proceeding before the

court below or before this court.

9. As in present cases, in many of the appeals filed by State, objections were raised by the Registry to furnish complete addresses of the respondent(s), the State apparently was unable to furnish the same immediately as even in the reference petition before the court below, the addresses were not complete. Though an effort could have been made to find out the same from the execution filed by the land owners or the banks where the land owners were maintaining their accounts in which the amount of compensation was credited, but apparently no effort was made in this directions. Still this all has to be avoided as any litigation who approaches the court or any authority, is required to furnish his complete particulars, such as father's name and complete address. This court had considered this aspect of the matter while dealing with R.F.A. No. 5203 of 2010 -Parveen Kumar v. State of Haryana and others,¹ decided on 10.8.2011, wherein while referring to the provisions of the Code of Civil Procedure and the High Court Rules and Orders has issued certain directions, which were circulated to all the courts concerned vide letter No. 13191 Gaz. II.17 dated 1.4.2011.

10. As has already been directed above that every litigant is required to furnish complete address of the party approaching the court and also the party against whom the relief is claimed, in case of failure as an extreme step even the case could be dismissed. The Registry has been directed to be vigilant at the time of filing of cases. However, still even if it escapes notice of the Registry and notices are served upon the opposite party, firstly it shall be his duty to furnish his complete address and secondly, in case the address of the party approaching the court is not complete, the opposite party can raise the objection thereto and the case shall proceed only after complete addresses are furnished, but it is to be noticed that not more remain pending for years together merely for furnishing of address(s) of the petitioner/plaintiff/appellant or the opposite party.

11. The land owners should furnish their complete addresses even at the time of filing of objections before the Collector at the time of acquisition of land.

12. The issue regarding non-filing of appeals by the State in all the land references decided by the court below came to the notice of this court on a number of occasions. In RFA No. 2269 of 2005 - Baldev Singh v. State of Punjab, decided on 28.10.2010, on account of non-filing of appeals by the State in all the cases, referring to the judgment of Hon'ble the Supreme Court in Mahadev v. The Assistant Commissioner/Land Acquisition Officer, (1994-2004) (Vol. II) Supreme Court Judgments on Land Acquisition 1658, the appeals filed by the State were dismissed.

The appeals filled by the State in this court are not properly monitored is evident from the fact that in RFA No. 1316 of 2009 - State of Haryana and another v. Ram Kishan and others, decided on 7.9.2010, this court dismissed an application filed by the State seeking condonation of delay of 8 years and 251 days in re-filing a bunch

of appeals for which there was no explanation available.

13. These are only few examples, there are many such instances in second aspect, on which the information was sought from the Registry was as to whether any instructions have been issued for clubbing the land references pertaining to one acquisition have been issued. It was considering the fact that small-small bunches arising out of the same acquisition were decided by the learned court below on 15 days of hearing, as per the note put up by the Registry.

14. Mr. Shailendra Jain, Advocate, who is present in court, apprised the court that a PIL was filed in this court bearing CWP No. 6024 of 1997 - Peeyushi Jain v. The State of Punjab, pertaining to the land acquisition cases. References was made therein to a judgment of Hon"ble the Supreme Court in [Mangat Ram Tanwar and another Vs. Union of India](#) . The file of the aforesaid writ petition was summoned. Copy of the instructions issued by this court vide letter No. 6339 Gaz. II(2) dated 10.3.1997 has been attached therewith, which were issues in terms of the directions given by Hon"ble the Supreme Court in Mangat Ram Tanwar's case (supra). To streamline the dealing of cases under the Land Acquisition Act, with a view to ensure their expeditious disposal, this Court deems it appropriate to issue the following directions:

(1) The Land Acquisition Collector shall ensure that all the land owners who file objections furnish their complete addresses.

(2) All the objections received by the Collector in land acquisition cases shall be referred to the court for adjudication maximum within three months after receipt thereof. Along with the objections or bunch of objections, a certificate shall be annexed by the Collector to the effect that all the objections received upto that date for the acquisition in question have been sent to the court.

(3) Whenever a land references is put up before the learned court below, to which it is entrusted, it shall ensure from the District Attorney/Assistant District Attorney and/or the Collector that all the objections received by the Collector upto date have been sent to the court for adjudication. A certificate to the effect has to be placed on record. In case the land references were received on different dates and were put up on different dates either for first hearing or for hearing after notice, the learned court below shall club all the land references arising out of the same acquisition to be heard on one date of hearing before it proceeds further in the matter. Assistance of the office of District Attorney is most relevant on this aspect.

(4) In case some objections are received late by the Collector for nay reason whatsoever, he shall be duty-bound to refer the same to the court immediately after its receipt so that the same is clubbed with the cases already pending and are disposed of along with that. Information about the cases already sent to be court shall also be furnished by the Collector.

(5) In case any objection is received after the disposal of the land references by the learned References Court, the Collector while sending the same to the court for adjudication shall annex a copy of the award/judgment of the court along with that, pertaining to the acquisition in question.

(6) The decision of the land references arising out of the same acquisition in piece-meal of different dates has to be avoided at all cost unless the references is received late.

(7) The learned courts below to keep in view the directions issued by Hon"ble Supreme Court in Mangat Ram Tanwar's case (supra) pertaining to disposal of land acquisition cases which are extracted below:

6. We are aware of the problem of back log in most of the Courts. The references u/s 18 should be treated as a class by themselves entitled to priority attention. If care and attention are devoted at the appropriate time, these cases can be easily disposed of by clubbing them groupwise and recording evidence after taking the consent of counsel for the parties. Most of the acquisitions these days relate to large patches of land and ordinarily they are covered under one notification. Cases which are covered by a common notification should be clubbed together for which a statutory foundation is available in the Amending Act of 1984 in extending the benefit of higher compensation to all lands covered by a common notification even if dispute is not raised. If that is done the total number of cases where evidence would be necessary is likely to be reduced and better attention can perhaps be given. The High Courts should take special note of the pendency of land acquisition references and where it is possible a Court may be set apart for those cases.

7. We expect every referee court to dispose of the references ordinarily within one year of receipt of the references and the outer limit should be the end of the second year. The High Courts in exercise of their controlling powers should ensure enforcement of this position so that all pending references in the subordinate courts at the original stage may be disposed of within time frame indicate above.

(8) The cases pertaining to acquisition of land for a canal/drain/road/distributory or of similar nature, where the acquired land passes through different villages in the form of a strip, endeavour should always be made to entrust the cases to one court. Even if the same arise out of different notifications, though issued close in time, the learned courts below should also make efforts to decide these cases collectively after perusing site plan for the entire acquired land. It would be in the interest of all the parties concerned that a site plan showing location of the entire acquired land and also the surrounding area is produced by the State in court. The learned courts below to keep in view the observations made by this court in R.F.A. No. 686 of 1991 - Lokeshwar Dutt v. The State of Haryana and another, decided on 16.8.2012, pertaining to the same issue, which are extracted below:

However, finding that number of cases are coming before this court, where this type of situation is being repeated on account of which the court finds it difficult to determine the fair value of the acquired land, which may result in injustice to either of the party. Not only that, in number of cases, the applications are filled by the land owners for producing additional evidence, which, in fact, should be part of the evidence to be led by the land owners/State at the very first instance. In many cases, the court, in the interest of justice, had to ask the State or party to produce on record the site plan showing the exact location of the acquired land, sale deeds etc. to avoid injustice to either of the party. This unnecessarily delays the disposal of cases. The basic things, which should be brought on record to enable the court to determine fair value of the acquired land is the notification u/s 4 of the Act, copy of the award, site plan to the scale, showing the acquired boundary vis-à-vis its location such as its closeness to the city, village, highway, internal road with all its positive and negative factors. Another important fact is that such a plan should have the status as on the date of issuance of notification u/s 4 of the Act, the date being crucial for the purpose of determination of fair value of the acquired land. It would be appropriate if the sale instances sought to be produced by the land owners or the State are pointed out on the site plan to be produced on record by either of the party. In the absence of which it is difficult to locate the same and consider its true value. The site plan, which should be taken on record, should be on butter paper or cloth, as it is seen in a number of cases that when the appeals are heard after 15-20 years, the site plans, which are quite big and may be on thin tracing paper, are torn out making it difficult for the parties to refer to the same and also for the court consider.

(9) At the time of filing of appeals against the awards of the learned References Court pertaining to an acquisition, the Collector/Land Acquisition Officer shall file an affidavit that appeals against all the awards of the learned References Court pertaining to the particular acquisition, have been filed.

(10) This court in R.F.A. No. 4742 of 2010 - The State of Haryana and another v. Sh. Tek Chand and others, decided on 11.10.201, wherein the appeal was filed by the State against award of the learned court below despite the fact that the earlier award of the References Court, which had been relied upon for the purpose of determination of compensation in that case had already been upheld by this court and there was no merit in the appeal even on the date of filing thereof, had issued following directions:

To avoid unnecessary adjournment of the cases, (sic) deem it appropriate to direct that in all appeals filed by the land owners or the State following information must be furnished in the appeal itself:

(i) In case the learned References Court had relied upon any earlier award pertaining to same or any other acquisition, the fact as to whether any appeal against the same is pending or not, should be mentioned in the grounds of appeal. The number of

such appeal and status thereof be also mentioned.

(ii) In case no earlier award is relied upon by the References Court, it should be mentioned that the References Court has not relied upon any earlier award.

The aforesaid facts should be mentioned in the last para of the grounds of appeal before the prayer clause. The Registry is directed to ensure compliance of the requirement. This may be brought to the notice of the Bar Association for notifying to the learned member of the Bar.

(11) In case the State fails to file appeals in all the cases decided by the References Court and ultimately the amount of compensation is reduced by higher court, the State shall be duty-bound to fix the responsibility of the person(s) concerned for the lapse and also recover the amount of loss suffered from the guilty officer(s)/official(s).

(12) The learned References Court should also ensure from the Collector and/or the District Attorney that no land references pertaining to the acquisition of land in the area, which is prior in time, is pending for adjudication and in case there was any acquisition of land in the area prior in time, the award passed by the References Court or the higher court therein should always be brought to the notice of the court concerned.

(13) It should be ensured by the court that the land references pertaining to acquisition of land, which is prior in time, are decided first before taking up the cases of the acquisition carried out subsequently.

A copy of the order be sent to Chief Secretaries Punjab and Haryana; Home Secretary, Chandigarh Administration, Chandigarh; all the District & Sessions Judges in Punjab, Haryana and Union Territory, Chandigarh for information and compliance.