

**V. Disposition**

(13) The dispensation has, therefore, to be that the petitioner in CWP No.5886 of 2009 cannot be denied as a right of renewal of his licence and his application for renewal under Rule 21, shall be granted for the shop SCF 12 without insisting on any form of affidavit that he shall not have any space in the auction platform. The petitioner is entitled to retain the space which he has, till any other alternative policy comes through either an amendment in the Act or in the Rules, which shall duly take note of the existing rights which are reasonable and just.

(14) The writ petitions are disposed of with the directions as above.

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**S. Gupta**

*Before M.M. Kumar, ACJ & Gurdev Singh, J.*

**MOHD. NAZIR AND OTHERS,—Petitioners**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

**CWP No. 16745 of 1991**

13th September, 2011

*Constitution of India - Art. 226/227 - Land Acquisition Act, 1894 - Ss. 4, 6, 11, 11 - Punjab Town Improvement Trust Act, 1922 - S. 42(2) - Development Scheme framed by the Improvement Trust - Award passed by Land Acquisition Collector - Petitioners claimed that their residential houses with pucca construction existed on a portion of the acquired land but the Collector has not determined the amount for the super-structure while announcing the award - Supplementary award with respect to super-structure passed by the Collector - Awards were challenged on the ground that they were without jurisdiction and passed after the statutory period of two years from date of declaration - Held that :*

- (i) The award can be given with respect to land keeping back the decision with regard to super-structures which can be evaluated later;
- (ii) The supplementary award can be given later evaluating the super-structures on the land.

- (iii) The award evaluating the land only will be a complete award for the purposes of Section 11-A of the Land Acquisition Act"

*Held*, That there are conflicting views with regard to passing of an Award in respect of super-structure simultaneously in view of judgment of the Hon'ble Supreme Court in Mohanji & Anr v/s State of UP and ors, JT 1995 (8) SC 599 and this Court in Sharanpal Singh v/s State of Punjab, AIR 1991 P&H 1998. The case was admitted to a Full Bench which overruled the judgments rendered in Sharanpal Singh's case, Parduman Singh v/s State of Punjab, 1992 PLR 470 & Dayal Singh v/s State of Haryana, 1992 PLJ 290. Relying upon the judgment of the Supreme Court in Mohanji's case the Full Bench laid down three propositions :

- "(a) The award can be given with respect to land keeping back the decision with regard to super-structures which can be evaluated later;
- (b) The supplementary award can be given later evaluating the super-structures on the land regarding which an award has been given earlier evaluating the land only would lapse;
- (c) The award evaluating the land only will be a complete award for the purposes of Section 11-A of the Land Acquisition Act"

(Para 7)

*Further held*, that the issue with regard to interpretation of Section 11-A stands answered. Judgement in Sharanpal Singh's case stands overruled in Mohanji's case and thus does not survive consideration.

(Para 10)

*Further held*, That the contentions with regard to already constructed and existing shops also does not find any merit as those shops are scattered and cannot be considered part of planned development. Any structure on the land, which is not in accordance with the prepared plan, would not satisfy the public purpose.

(Para 11)

*Further held*, That petitions dismissed with a further direction that if the award with regard to super-structure has not been announced the same would done within three months.

(Para 12)

Arun Jindal, Advocate, for the petitioners in CWP Nos. 6550, 6848, 6849, 6851, 6852 and 6896 of 1993.

None for the petitioners in CWP Nos. 16745 of 1991, 4754 of 1993 and 5396 of 1996.

J.S. Puri, Additional Advocate General, Punjab, for the respondents.

**M.M. KUMAR, J.**

(1) This order shall dispose of a bunch of petitions\* because common questions of law are involved therein. For proper adjudication of the controversy in hand at the outset we propose to notice the brief facts and the prayer made by the petitioners in various petitions, which are as under :

**CWP NO. 16745 OF 1991:**

(2) The Malerkotla Improvement Trust-respondent No. 3 framed a development scheme under the provisions of the Punjab Town Improvement Trust Act, 1922 (for brevity, 'the 1922 Act'). The said scheme was sanctioned under Section 42(2) of the 1922 Act by the State of Punjab and notified vide notification dated 23.1.1987. The land measuring 26 Bighas 13 Biswas belonging to the petitioners was acquired. On 20.1.1989, the Land Acquisition Collector passed Award No. 1 of 1988-89 in respect of the acquired land (P-1). The petitioners claimed that on a portion of the acquired land, their residential houses with pucca construction were in existence but while announcing the award the Collector has not determined the amount of compensation in respect of superstructures. On 30.10.1991, the Collector passed an order directing the Executive Officer of the Improvement Trust, Malerkotla to inform the owners that an award with regard to the scheme would be announced on 13.11.1991 (P-2). On 13.11.1991, the Collector passed another award in respect of the superstructures, which was termed as 'Supplementary Award' (P-3). The petitioners challenged order dated 30.10.1991 and award dated 13.11.1991 (P-2 & P-3), passed by the Collector-respondent No. 3 being without jurisdiction as the same has been passed after statutory period of two years from the date of publication of the declaration which was made on 23.1.1987 under Section 42(2) of the 1922 Act.

**CWP NOS. 6848, 6849, 6850, 6851, 6852 AND 6896 OF 1993**

(3) In these petitions, the petitioner(s) have challenged notification dated 2.5.1989 issued under Section 4 of the Land Acquisition Act, 1894 (for brevity, 'the 1894 Act') and the award dated 30.4.1992 passed by the Land Acquisition Collector, Colonisation Department, Punjab-respondent No. 2. The petitioner(s) in these petitions purchased the land through various registered sale deeds and constructed their shops. On 2.5.1989, the respondent State of Punjab issued a notification under Section 4 of the 1894 Act that land is required for a public purpose, namely, for the construction of a new Mandi Township at Patran, Tehsil Samana, District Patiala (P-1). Eventually, the award in respect of the acquired land was made on 30.4.1992 (P-2). The grievance of the petitioner(s) in these petitions is that since no award in respect of the structures standing on the acquired land has been passed within the statutory period of two years, therefore, the acquisition proceedings are not sustainable and liable to be set aside. No supplementary award could have been passed by virtue of Sections 11 and 11-A of the 1894 Act.

**CWP No. 4754 of 1993**

(4) In this petition, the petitioners have challenged notifications dated 23.2.1989 and 30.3.1989 (P-1 and P-2) issued under Sections 4 and 6 of the 1894 Act respectively. The respondent State of Punjab proposed to acquire land by issuing a notification dated 23.2.1989 under Section 4 for a public purpose, namely, for construction of Kandi Canal from 32325 RD Meters to 42762 RD Meters in Tehsil and District Hoshiarpur. A declaration under Section 6 was issued on 30.3.1989 acquiring the land of the petitioners. On 22.3.1991, the Collector passed four awards bearing Nos. 112-A, 112-B, 112-C and 112-D assessing the compensation of the acquired land (P-3 to P-6). Again the grievance of the petitioners is that no award in respect of the super-structures as well as Tubewell etc. was passed, therefore, the acquisition proceedings are not sustainable and liable to be set aside.

**CWP NO. 5356 OF 1996**

(5) In this petition, the petitioners have challenged notifications dated 7.1.1994 and 8.8.1994 (P-1 and P-2) issued by the respondent State of Haryana under Sections 4 and 6 of the 1894 Act respectively. The land

in question has been acquired for the public purpose, namely, '66-KV Sub-Station, Mulana of the Haryana State Electricity Board'. On 5.2.1996, the Collector passed an award in respect of the acquired land, the timber/fruit trees and the Kotha of the submersible tubewell. However, the grievance of the petitioners is that no award in respect of the submersible tubewell has been passed which was installed by them at a cost of '3,00,000/-. Therefore, the acquisition proceedings are not sustainable and liable to be set aside.

### **FUNDAMENTAL CHALLENGE:**

(6) From the narration of above facts, it is clear that the fundamental challenge in these petitions is that separate award under Section 11-A of the 1894 Act would not be permissible in respect of the land and super structure. In that regard, reliance has basically been placed on a Division Bench judgment of this Court rendered in the case of **Sharanpal Singh versus State of Punjab (1)**. In the petitions challenging notification dated 2.5.1989 (supra) and award dated 30.4.1992 (supra), the acquisition has also been challenged on the ground that it would not serve any public purpose because the same very purpose stand already achieved as the petitioners in those cases had constructed shops, which were proposed to be constructed by establishing a New Mandi Township.

### **STAND OF THE RESPONDENT(S)**

(7) The primary stand of the respondents in the written statement(s) is that the award in respect of the land and compensation thereof was paid in time. There was some delay in announcing the award with regard to super structure on account of the fact that the expert report regarding the value of the super structure was received late. The delay in announcing the award is unintentional and unavoidable. Thus, the respondents have defended the acquisition proceedings.

### **REFERENCE AND ANSWER BY THE FULL BENCH**

(8) On the issue whether award in respect of superstructure has to be simultaneously, there were some conflicting views. The conflict was noticed on the basis of the judgment of Hon'ble the Supreme Court

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(1) AIR 1991 (P&H) 1998

rendered in the case of **Mohanji and another versus State of U.P. and others (2)**, and the Division Bench judgment of this Court rendered in Sharanpal Singh's case (supra). On 13.5.1992, when CWP No. 16745 of 1991 came up for consideration, the Division Bench while admitting the case to the Full Bench formulated the following questions:-

- “(a) Whether an award can be given with respect to land, keeping back decision with respect to super structures and whether the super structures are liable to be re-evaluated later?
- (b) Whether a supplementary award can be given later in an award given earlier and if so, what will be its effect on the award given earlier? and
- (c) When an award shall be an award for the purpose of Section 11-A of the Land Acquisition Act?”

(9) Answering the reference made to the Full Bench, their Lordships' have opined that the Division Bench judgments of this Court in Sharanpal Singh's case and **Jagir Singh versus State of Punjab (3)**, and the Single Bench judgments rendered in the cases of **Parduman Singh versus State of Punjab (4)** and **Dayal Singh versus State of Haryana (5)**, did not lay down the correct law. In view of the judgment of Hon'ble the Supreme Court in Mohanji's case (supra), the judgment in Sharanpal Singh's case (supra) has been specifically overruled. Accordingly, three propositions have been laid down by the Full Bench, which reads as under:

- “(a) The award can be given with respect to land keeping back the decision with regard to superstructures which can be evaluated later;
- (b) The supplementary award can be given later evaluating the super-structures on the land regarding which an award has been given earlier and in such a situation the award given earlier evaluating the land only would not lapse;
- (c) The award evaluating the land only will be a complete award for the purposes of Section 11-A of the Land Acquisition Act.”

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(2) JT 1995 (8) SC 599

(3) 1994 (1) RLR 344

(4) 1992 PLR 470

(5) 1992 PLJ 290

### **DISCUSSION AND CONCLUSION**

(10) Mr. Arun Jindal, learned counsel for the petitioner(s) has pointed out that apart from the issue of consolidated award in respect of the land and super structure, there are other issues for which the Full Bench had sent the cases back to the hearing bench. Accordingly, the matter has been listed before this Division Bench. According to learned counsel, the public purpose for acquiring the land was to establish a New Mandi Township and, in fact, that purpose stood achieved because the shops which have been built by the petitioners in the year 1988, already existed on the spot. Learned counsel has maintained that it was a futile exercise to raise the construction of similar shops under the garb of constructing a New Mandi Township.

(11) Mr. J.S. Puri, learned Additional Advocate General, Punjab has pointed out from the written statement that the petitioners have been treated as locally displaced persons and a plot has been reserved for them at the reserve price of ‘ 190/- per Square Yard. The land has now been fully developed by the Improvement Trust and a sum of ‘ 14.45 lacs has already been spent on the development. Only a small portion measuring 2Bighas and 10Biswas has been in possession of some of the petitioners and on that count the development has been held up. In any case, the argument raised by the learned State counsel is that merely construction of few shops would defy any planned, construction and development of a modern Mandi Township and, therefore, it is no argument that since the shops have already been constructed by the petitioners the public purpose to establish a New Mandi Township by constructing the shops would stand achieved.

(12) Having heard learned counsel for the parties, we are of the considered view that the fundamental issue raised in these petitions was regarding the interpretation of Section 11-A of the Act which stand already answered. The primary reliance on the judgment of Sharanpal Singh’s case (*supra*) would not survive because the aforesaid judgment is overruled by Hon’ble the Supreme Court in Mohanji’s case (*supra*), which has been duly noticed by the Full Bench. Accordingly, the issue is covered against the petitioners by the opinion expressed by the Full Bench and would not survive for consideration by us.

(13) The other issue raised by Mr. Jindal, learned counsel for the petitioners with regard to already constructed and existing shops would also not require any detail consideration on account of the fact that those shops are scattered and cannot be considered as part of the planned development. Any structure on the land, which is not in accordance with the plan prepared by the respondents, would not satisfy the public purpose. Accordingly, we also do not find any merit in the contention.

(14) For the aforementioned reasons, these petitions fail and the same are dismissed. If the award with regard to super structure has not been announced then the same shall now be done within a period of three months from the date of receipt of a certified copy of this order.

(15) A photocopy of this order be placed on the files of connected cases.

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***M. Jain***

***Before Alok Singh, J.***

**BALWINDER KAUR, SARPANCH,—*Petitioners***

***versus***

**STATE OF PUNJAB AND OTHERS,—*Respondents***

**CWP No. 13675 of 2011**

14th September, 2011

***Constitution of India - Art.226/227 - Punjab Panchayati Raj Act - S. 19 - General Clauses Act - Ss. 6 (c) & (d) - Challenge is to the Notice convening meeting to discuss 'No confidence Motion' and meeting and letter recommending acceptance of 'No confidence Motion' as also election of Respondent # 6 as the Sarpanch in place of the Petitioner.***

***Held,*** That in view of the judgment passed in Mohinder Khan v/s Director Rural Development & Panchayats, Punjab & Ors., CWP # 17943 (D/- 15.11.2010) seven days clear notice is required to convene a meeting to discuss "No confidence Motion" in terms of Section