

Before Rajesh Bindal, J.

HARDEV KAUR — *Petitioner*

versus

UNION OF INDIA AND OTHERS — *Respondents*

CWP No. 24548 of 2015 O&M

July 21, 2017

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013- S. 26 — Statutory requirement — Not complied — Issuance of more instruction in compliance is not sustainable — Award set aside — Petition allowed.

Held, that subsequent thereto, fresh award was passed by the Collector on 29.5.2015. In the award passed on 4.4.2014, the value of the land was determined @ Rs.1.5 lacs per marla, which was reduced to Rs.40,262/- per marla. To challenge the determination of value of the land merely because of change of the enactment under which the value has been determined, the petitioner sought to challenge the vires of Section 26 of the 2013 Act, but reserved his right to challenge the same in case the need arises subsequently, as the contention raised is that even as per Section 26 of the 2013 Act, award cannot be legally sustained, there being non-compliance to the statutory requirements.

(Para 9)

A.S. Narang, Advocate
for the petitioner.

Udit Garg, Advocate for
Alok Jain, Advocate
for respondent No. 1-UOI.

P. S. Bajwa, Additional Advocate General, Punjab.

RAJESH BINDAL J.

(1) The present petition has been filed challenging vires of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the 2013 Act'), instructions dated 16.10.2014 (Annexure P-8) issued by Revenue, Rehabilitation and Disabler Management Department (Land Revenue Branch), Government of Punjab; notifications dated 13.7.2011

(Annexure P-1) and 21.6.2012 (Annexure P-3) issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act'), respectively, and the award dated 29.5.2015 (Annexure P-5) announced by Land Acquisition Collector (for short, 'the Collector').

(2) Learned counsel for the petitioner submitted that the State sought to acquire the land owned by the petitioner, while issuing notification under Section 4 of the 1894 Act on 13.7.2011. The purpose of acquisition was construction of Toll Plaza for project of 4-Lanning of road along Sidhwan Canal from Doraha to Ludhiana. The petitioner filed objections under Section 5A of the 1894 Act, however, without affording opportunity of hearing, the objections were rejected and notification under Section 6 of the Act was issued on 21.6.2012. Earlier, the petitioner filed CWP No. 18188 of 2012 impugning the aforesaid notifications, however, the same was dismissed as withdrawn on 12.10.2012. Before the award was announced by the Collector under the 1894 Act, the 2013 Act came into force w.e.f. 1.1.2014. The 1894 Act was repealed. The award was announced by the Collector under the repealed Act on 4.4.2014. The market value of the acquired land was determined at Rs. 1.5 lacs per marla. As the Collector had passed the award under the repealed Act, the petitioner filed CWP No. 13076 of 2014, which was disposed of by this court on 27.2.2015 on the stand taken by learned counsel for the respondents therein that the award will be amended in terms of the provisions of the 2013 Act and the process shall be concluded by 31.5.2015. Thereafter, the Collector passed the award on 29.5.2015 determining the value @ Rs.40,262/- per marla.

(3) Learned counsel for the petitioner argued that in terms of Section 11A of the 1894 Act, award could be announced within a period of two years from the date of issuance of notification under Section 6 of the aforesaid Act, which was issued on 21.6.2012. The award could be announced upto 20.6.2014, hence, the award now passed is beyond the period prescribed under the 1894 Act. He further submitted that in terms of Section 25 of the 2013 Act, award in which proceedings had been initiated under the 1894 Act could be passed within one year from 1.1.2014, i.e., the date when the 2013 Act came into force. That period of limitation expired on 1.1.2015. Even in terms thereof, the award dated 29.5.2015 is beyond the period of limitation. He further submitted that in terms of Section 26 of the 2013 Act, the market value of the land is to be determined on certain specified principles. Multiplication factor is to be applied in terms of Section 26(2) read with First Schedule to the 2013 Act. The appropriate

Government in the present case has not notified any multiplication factor. Merely instructions have been issued on 16.10.2014, which do not comply with the provisions of the 2013 Act. Even in those instructions, multiplication factor has been restricted to 1.25 which is contrary to the spirit of the 2013 Act, which provides the range from 1 to 2. It is the admitted case of the State that no notification has been issued. In case the Act provides for doing any act in a particular manner, all other forms are barred.

(4) Reference was also made to para 13 of the Statement of Objects and Reasons of the 2013 Act. By specifying the multiplication factor by issuing instructions, the State in a way has amended the Schedule for which no power is vested in the State in terms of Section 106 of the 2013 Act. It was further submitted that the only liberty granted by this court while deciding the writ petition filed by the petitioner was that the earlier award could be modified only to the extent of solatium earlier granted @ 30% was to be increased to 100% in terms of the 2013 Act, but the Collector thought it appropriate to pass fresh award in terms of the provisions of the 2013 Act. The submission is that once the notification specifying the multiplication factor has been issued, the award itself is bad and deserves to be set aside. Reliance was placed upon *Subhash Ram Kumar Bind alias Vakil and another* versus *State of Maharashtra*¹ and judgment of Bombay High Court in Writ Petition No. 4274 of 2014—*Panjabrao* versus *The State of Maharashtra and others*, decided on 9.3.2015.

(5) Learned counsel further submitted that though vires of Section 26 of the 2013 Act regarding valuation of the acquired land has been challenged in the present petition, however, he reserves his right to challenge the same subsequently, if need arises.

(6) On the other hand, learned counsel for the State could not dispute the fact that First Schedule attached to the 2013 Act provides for issuance of notification for specifying multiplication factor in terms of Section 26(2) of the 2013 Act and the same has not been issued. Only instructions have been issued. He submitted that the instructions are similar to what the notification could be. Only to save time, instructions have been issued. That should be treated as compliance to the provisions. He further submitted that the 2013 Act provides for multiplication factor in the range of 1 to 2. It is not compulsory to

¹ (2003) 1 SCC 506

prescribe multiplication factor of two, hence, the argument that the instructions are contrary to the Schedule is misconceived. Once this court had given liberty to pass fresh award, the same had to be in terms of the provisions of the 2013 Act. Needful has been done. The project for which the land was acquired is of immense importance. Any delay will result in bottleneaking of traffic. Majority of the landowners have already accepted the compensation.

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

(8) The undisputed facts on record are that notifications under Sections 4 and 6 of the 1894 Act were issued on 13.7.2011 and 21.6.2012, respectively. The award was announced by the Collector 4.4.2014. The petitioner filed CWP No. 13076 of 2014. The same was disposed of on 27.2.2015 by passing the following order:

“Learned counsel appearing on behalf of the respondent-State of Punjab states that the respondents will consider the petitioner's application for increasing the amount of compensation. Mr. Bhardwaj reiterates the stand taken in the written statement that the Award will be amended in accordance with the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and that the modified draft award will be submitted for approval and further thereupon compensation shall be determined and disbursed accordingly by the concerned Land Acquisition Collector. The statement is accepted and it is so ordered that the process shall be concluded by 31.5.2015.”

(9) Subsequent thereto, fresh award was passed by the Collector on 29.5.2015. In the award passed on 4.4.2014, the value of the land was determined @ Rs. 1.5 lacs per marla, which was reduced to Rs. 40,262/- per marla. To challenge the determination of value of the land merely because of change of the enactment under which the value has been determined, the petitioner sought to challenge the vires of Section 26 of the 2013 Act, but reserved his right to challenge the same in case the need arises subsequently, as the contention raised is that even as per Section 26 of the 2013 Act, award cannot be legally sustained, there being non-compliance to the statutory requirements. Relevant provisions of Section 26(1) and (2) of the 2013 Act and First Schedule to the 2013 Act are reproduced below:

“26. Determination of market value of land by Collector.-

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:

- (a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
- (b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
- (c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11.

Explanation 1. The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.- For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.- While determining the market value under this section and the average sale price referred to in *Explanation 1* or *Explanation 2*, any price paid as compensation for the land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.- While determining the market value under

this section and the average sale price referred to in *Explanation 1* or *Explanation 2*, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purpose of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

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FIRST SCHEDULE

COMPENSATION FOR LAND OWNERS

The following components shall constitute the minimum compensation package to be given to those whose land is acquired and to tenants referred to in clause (c) of section 3 in a proportion to be decided by the appropriate Government.

S. No.	Component of compensation package in respect of land acquired under the Act.	Manner of determination of value	Date of determination of value
(1)	(2)	(3)	(4)
1.	Market value of land	To be determined as provided under section 26.	
2.	Factor by which the market value is to be multiplied in the case of rural areas.	1.00(one) to 2.00(Two) based on the distance of project from urban area, as may be notified by the appropriate Government.	
3.	Factor by which the market value is to be multiplied in the case	1(one).	

	of urban areas		
4.	Value of assets attached to land or building	To be determined as provided under Section 29.	
5.	Solatium	Equal to one hundred percent of the market value of land mentioned against serial number 1 multiplied by the factor specified against serial number 2 for rural areas or serial number 3 for urban areas plus value of assets attached to land or building against serial number 4 under column (2).	
6.	Final award in rural areas	Market value of land mentioned against serial number 1 multiplied by the factor specified against serial number 2 plus value of assets attached to land or building mentioned against serial number 4 under column (2) plus solatium	

		mentioned against serial number 5 under column (2).	
7 and 8.			

(10) A perusal of Section 26(1) of the 2013 Act shows that there are certain parameters provided for assessment of compensation for the acquired land. The market value so calculated in terms of sub-section (1) is to be multiplied by a factor to be specified in the First Schedule. First Schedule provides that a multiplication factor from 1 to 2 based on the distance of a project from urban area, as may be notified by appropriate Government, has to be applied. The “appropriate Government” means in relation to acquisition of land in the State. The word 'notification' has also been defined in Section 3(v) of the 2013 Act. In the case in hand, admittedly the State has not issued any notification specifying multiplication factor to be applied for assessment of compensation. The land of the petitioner is admittedly located in the rural area. The State instead of issuing notification has merely issued instructions dated 16.10.2014 specifying multiplication factor, that too specifying multiplication factor in the range of 1 to 1.25. The same has been applied in the case of the petitioner by the Collector while announcing the award after the decision of the earlier writ petition filed by the petitioner.

(11) As the statutory requirement of issuing the notification in terms of Section 26(2) read with First Schedule to the 2013 Act has not been complied with before announcing the award by the Collector, in our opinion, the award cannot be legally sustained. Mere instructions cannot be considered as compliance to the statutory requirement.

(12) Accordingly, the award dated 29.5.2015 passed by the Collector in the case of the petitioner is set aside. Necessary consequence to follow.

(13) The writ petition stands disposed of.

Amit Aggarwal