

- (iv) The Regular Letter of Allotment shall be issued on deposit of 50% price of the plot price in lump-sum by the petitioners. The needful shall be done within a period of one month from the date of deposit, subject to further condition to make payment of balance amount as per usual terms and conditions of respondent Nos. 1 and 2 ;
- (v) If the petitioners fail to deposit the 50% of the price in lump-sum as per the demand raised by respondent Nos. 1 and 2 within the stipulated period then the writ petitions shall be deemed to be dismissed without entertaining any further correspondence in that regard.

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**R.N.R.**

*Before M.M. Kumar & Jora Singh, JJ.*

**SHAM LAL & ANOTHER,—Petitioners**

*versus*

**UNION OF INDIA AND OTHERS,—Respondents**

C.M.P. NO. 6023-C OF 2008

11th December, 2008

*Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4 & 11—Acquisition of land by invoking urgency provisions of S.17(2)—Acceptance of 80% of estimated compensation cost of land by landowners—Collector assessing market value of land—Ministry of Defence not accepting market value of land—Central Government not approving draft award—Punjab Govt. approving draft award—Approval of award—Appropriate Government—Whether Central Government or State Government—Central Government passing delegation order in favour of Punjab Government entrusting with all powers—High Court directing Collector to announce award—No appeal against such order of High Court by Union of India—Issue with regard to seeking prior*

***approval of Central Government stands foreclosed & cannot be reopened once again by filing another petition—Petition filed by Union of India dismissed while directing Ministry of Defence to deposit balance amount of award.***

*Held*, that after passing of order by the Division Bench on 10th December, 2007 and issuance of directions to the Collector to announce award in terms of order, no room is left to once again raise the same issue all over again. The parties are bound by the aforementioned directions which were issued in a petition which the Union of India through the Ministry of Defence was the party and its counsel was also present. The order was passed despite the same stand of the Union of India that prior approval of the Central Government was required and the Central Government is alone the competent authority under proviso to Section 11(1) read with Section 3 (ee) of the Act. Therefore, the aforementioned issue is foreclosed and cannot be reopened once again in these proceedings.

(Para 21)

*Further held*, that a perusal of Section 3(ee) of the Act shows that when the land is acquired for the purposes of the Union then the Central Government is an appropriate Government and when the land is acquired for any other purpose then the State Government would be the appropriate Government. However, that would be the situation in the absence of any delegation. In the present case, it is conceded position that the delegation order was passed by the Central Government. The notification dated 22nd August, 1985 in unequivocal terms entrusted to the Government of Punjab the function of the Central Government under the Act. There is, thus, no doubt left that after the aforementioned delegation order, it is the State of Punjab, which is the appropriate Government who has been entrusted with all the powers of the Central Government in respect of the Act.

(Paras 23 & 24)

*Further held*, that the respondents, in fact, are intermingling the issue by stating that approval of the Central Government was required because it has rejected the award,—*vide* order dated 2nd March, 2006. However, the issue cannot be reopened because it was thereafter that

CWP No. 6034 of 2007 was filed and the Union of India has taken a specific stand before this Court pleading that prior approval of the Central Government was required before announcement of the award. Despite the aforementioned stand this Court has directed the Collector, with a note of caution to pass the award forthwith and accordingly the award has been passed. The aforementioned order dated 10th December, 2007 passed by this Court has attained finality, which has been accepted by the Union of India because no appeal has been filed against that order. Once the aforementioned situation prevails then no doubt is left that the issue with regard to seeking prior approval stands foreclosed cannot be reopened once again by filing another petition.

(Para 25)

*Further held*, that if we assume that the Central Government is the appropriate Government, the order dated 2nd March, 2006 passed by the Government of India, Ministry of Defence then too it would not stand judicial scrutiny because Section 11 does not create an appellate forum by authorizing the appropriate Government to reject the award. It merely provides for an administrative action whereas the powers of the Collector are quasi judicial in nature.

(Para 26)

C.M. Mujal, Advocate *for the petitioners*.

Suvir Sehgal, Addl. A.G. Punjab *for respondent Nos. 2 and 3.*

Kamal Sehgal, Advocate *for respondent Nos. 1 and 4.*

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

(1) This order shall dispose of CWP Nos. 6023 of 2008 (for first petition) and 8308 of 2008 (for short second petition). This petition has been filed by the land owners seeking directions to Union of India, State of Punjab and their officers to release the balance compensation on account of acquisition of their land. The second petition has been filed by the Union of India through the Ministry of Defence for quashing the award dated 30th January, 2008 passed by the Special Land

Acquisition Collector, Jalandhar, (for short 'Collector') claiming the same to be in violative of proviso to Section 11 of the Land Acquisition Act 1894 (for brevity of Act).

(2) Brief facts of the case, which have led to the filing of these petitions are that on 10th July, 2002, the Ministry of Defence agreed to grant sanction to acquisition of land in Village Korianwali and Village Panchanwali, Tehsil Fezilka, District Ferozepur. The Ministry of defence sent the approval by various letters written on 15th January, 2001, 23rd August, 2001 and 26th March, 2002 requiring the respondent, State of Punjab to acquire the land by invoking urgency provision under Section 17 of the Act. In that regard Collector was asked to take immediate step of publishing a Notification under Section 4 and also for making declaration under Section 6 read with Section 17 of the Act as the land was required urgently and to hand over its possession to the Ministry of Defence.

(3) In pursuance to the aforementioned communication of the Ministry of Defence, the Collector issued Notification under Section 4 read with Section 17 of the Act on 10th July, 2002 which was published in the Punjab Government Gazette and declaration was issued on 17th September, 2002 under Section 6 read with Section 17 of the Act (Annexure P-'2' and P-'3'). The Notification further, specified the urgency in acquisition by making reference to Section 17(2). As per the provisions of Section 17(3A)(a), estimated compensation to the extent of 80% Land Acquisition Act is required to be paid to the land owners before taking over possession. Accordingly, an amount of Rs. 3,91,04000 was put at the disposal of the Special Land Acquisition Collector on 10th Jaunary, 2003. He was to disburse the compensation to the land owners and take over the possession of land. The Collector after completing the revenue record and other formal acts then issued notice under Section 9(1) of the Act to all interested persons on 7th July, 2004. The notice under Section 9(1) categorically mentioned that the land had been acquired by invoking urgency provision as per Section 17(2), 80% of estimated compensation was to be disbursed and possession was to be handed over to the Department of Defence. The hearing for that purpose was fixed for 27th July, 2004. Accordingly,

80% estimated acquisition cost was disbursed on the spot and the possession of the land was handed over to the Defence Department.

(4) Thereafter, the Collector was to announce the award. A draft award was prepared by the Special Land Acquisition Collector on 16th August, 2004 and it was sent for approval to the Deputy Commissioner with a further request of forwarding the draft award to the Department of Home Affairs and Justice, Government of Punjab, so that the same be announced on 15th September, 2004 to avoid any legal complication. A copy of the award was also forwarded to the Principal, Director Defence Estates Western Command for information and necessary action. A request was also made to the Ministry of Defence to obtain approval to the draft award from the competent authority and demand was raised to deposit balance amount of Rs. 4,37,615,00 before 15th September, 2004 because the award was to be announced by that date (Annexure P-'4' and P-'5'). It is pertinent to mention that the Collector had fixed a flat rate being the market value of the land at Rs. 2,75,000 lacs per acre.

(5) In pursuance to the request sent by the Collector, correspondence between Special Land Acquisition Collector through the State of Punjab and Ministry of Defence ensued which has been placed on record as Annexure P- '6' to P- '22'. The crux of this correspondence is that the market value of the land assessed by the Collector was not acceptable to the Ministry of Defence. The aforementioned correspondence may be summed up as follows :

[A] On 9th September, 2004 the Ministry of Defence through its officer sent a letter to the Collector, stating that no cogent justification has been given for fixing the market price and the sale transactions which have taken place during the period of notification under Section 4 of the Act were not taken into consideration which has resulted in fixing a very high price of the land. Accordingly, a request was made to the Collector to re-consider the whole matter (Annexure P-'6').

[B] On 13th September, 2004 another letter was flashed by the officers of the Ministry of Defence, requesting

the Collector to supply the information regarding the amount of Rs. 3,91,040,000 which was placed at the disposal of the State Government on 10th January, 2003, whereas same was disbursed on 27th July, 2004 and the issue with regard to interest was also raised. It was further pointed out that the element of interest has not been reflected in the draft award and request was also made to fix some other date for announcement of the award by changing the date originally suggested which was 15th September, 2004 (Annexure P-‘7’).

- [C] On 14th September, 2004 the Principal Director Government of India, Ministry of Defence sent a letter to the Chief Secretary, Government of Punjab stating that the draft award has hiked the price of the land by 50 to 80% which is higher than the original suggested rate by Government of India sanctioned in the year 2001 and request was made for issuing instructions to the Collector by suitably amending the draft award and enabling them to send approval (Annexure P-‘9’ and P-‘10’).
- [D] On 20th September, 2004, 15th October, 2004, 4th November, 2004, 29th November, 2004, 10th November, 2004, letters similar to the one earlier written on 14th September, 2004 were again written (Annexure P-‘11’ to P-‘15’).
- [E] On 23rd March, 2005 the Additional Secretary, Government of India sent a letter to the Chief Secretary, Government of Punjab requesting him to look into the matter personally and to ensure that the rate of compensation proposed by the Deputy Commissioner are suitably revised. The Government of India did not approve the draft award and directed the Collector by writing similar request on 23rd June, 2005, 7th September, 2005 and 7th March, 2006.

[F] On 14th February, 2006, the Additional Secretary Home Government of Punjab issued directions to the Collector to announce the award as per the instructions of Ministry of Defence issued on 2nd March, 2006 suggesting the rate of Rs. 1,40,000 per acre for village Korianwali and Rs. 1,74,600 per acre for Village Panchanwali.

[G] On 14th March, 2006, however, the Collector informed the Ministry of Defence that it was beyond this competence to prepare and declare fresh award because the draft award stood approved by the Government of Punjab on 10th September, 2004. On the basis of the entrustment of power to appropriate Government by the Central Government,—*vide* notification dated 24th March, 1952.

(6) After the aforementioned long drawn correspondence, the Ministry of Defence addressed a letter to the Collector, that in exercise of power under provision of Section 27 read with Section 3(ee) of the Act, the Central Government had decided to refuse approval to the draft award. The aforementioned letter dated 2nd March, 2006 has been placed on record as Annexure P-‘23’.

(7) In the concluding para a direction has been issued to the Collector that the award be declared as per the average rates of the registered sale deeds for the land under acquisition and action suggested the rates of Rs. 1,40,233 per acre for Village Korianwali and 1,74,600 per acre for Village Panchanwali.

(8) Similar letter was also sent on 7th March, 2006 to the Collector (Annexure P-‘24’). On 14th March, 2006 a letter on similar line was sent to the Additional Secretary Home, Government of Punjab (Annexure P-‘25’). The Collector also sent a communication to the Ministry of Defence, New Delhi, expressing her inability to announce the award on the line suggested by them for the reason that the draft award stood approved by the appropriate Government i.e. State of Punjab and the same is deemed to have become final. The Collector placed reliance on the notification dated 23rd March, 1952. Another

letter 21st March, 2006 (Annexure P-'27') was written to the Chief Minister, Punjab by the Ministry of Defence suggesting the same rate as has been noticed in the preceding para.

(9) On account of the fact that award was not being announced nor balance compensation of the land was not being paid the land owners were constraint to file CWP No. 6034 of 2007 with a prayer for quashing the Notification dated 10th July, 2002 issued under Sections 4 and declaration dated 17th September, 2002 made under Section 6 read with Section 17 of the Act by setting up the plea that the award which was required to be announced within a period of two years could not be announced and therefore, the proceedings have lapsed by efflux of time. The Union of India and the State of Punjab were made party respondents along with their officers.

(10) The stand taken by the Union of India in the Written Statement filed in that case was that acquisition proceedings could not be challenged after acceptance of 80% of the estimated compensation cost of the land which has been duly disbursed by the Collector on 27th February, 2004. A further assertion was made that the balance amount of compensation would be paid to the land owner after the award is declared by the Collector. The Union of India also assured that as per the proviso to Section 11 no award could be made by the Collector under Section 11(1) without the previous approval of the appropriate Government which in the present case was claimed to be the Central Government. A reference was made to the letter dated 2nd March, 2006 (Annexure P-'23' in CWP No. 8308 of 2008) with regard to the rate suggested by the Ministry of Defence to the Collector. It was also suggested that the final award was to be announced by the Collector. The Division Bench allowed the petition on 10th December, 2007 by issuing directions.

(11) In the present bout of litigation the land owners have approached this Court in the first petition with a prayer for disbursement of compensation on account of acquisition of their land as per the award whereas the Union of India through the Ministry of Defence has challenged the award.

(12) Mr. Kamal Sehgal, learned counsel for Union of India has vehemently argued that the award cannot be sustained as the same has



been announced in flagrant violation of proviso to Section 11 of the Act which require prior sanction of appropriate Government. According, to the learned counsel the appropriate Government, in the present case is the Union of India through the Ministry of Defence. He has further pointed out that,—*vide* notification dated 22nd August, 1985 (Annexure P-‘1’) issued under Article 258 of the Constitution the Government of Punjab has been entrusted with the duty to discharge the functions of the Central Government under the Land Acquisition Act except one which are required to be discharged under Section 55(1)(i) of the Act by framing of Rules. The argument is that the entrustment of functions is subject to the conditions that the Government of Punjab was to comply with such general and special direction as the Central Government may issue from time to time. He has maintained that once the directions have been issued by the Central Government to the State of Punjab and its officers to announce the award at specified rates then the announcement of award at a exorbitant rate is vitiated and has to be declared as illegal because it contravenes the notification dated 22nd August, 1985. Learned counsel has opposed the prayer made by the petitioner in the first petition by arguing that no direction for disbursement compensation on the basis of the impugned award 31st January, 2008 (Annexure P-‘29’) could be issued because it would amount to approving an illegal award announced against the Ministry of Defence.

(13) Mr. C. M. Munjal, learned counsel for the land owner on the other hand has argued that the land owners and other interested persons have been harassed without any justification by delaying disbursement of compensation in respect of their land which they have lost since the year 2002. The petitioner and the land owners have asserted that the prices of the land have been continuously on the rise and payment of compensation would be injurious to their interest because it would not be possible for them to purchase any land elsewhere at similar rates which were prevalent on the date of Section 4 notification because of rapid purchase of land by global players in the market. He has also submitted that the land owners/other interested persons on the one hand lost their land and occupation ; and on the other hand they are not being paid compensation.

(14) Learned counsel has controverted the submissions made by Mr. Sehgal by arguing that after the judgment of the Division Bench rendered in CWP No. 6034 of 2007 on 10th December, 2007 where similar pleas were raised, it is not open to Union of India to argue all over once again that the appropriate Government is the Central Government or that the award is based on exorbitant assessment of the rates of the land. He has also submitted that all these issues have been raised by the Central Government in their written statement in the aforesaid writ petition filed by the land owners earlier but despite that the Division Bench had issued directions to the Collector, to announce the award without any delay.

(15) Having heard the learned counsel for the parties and perusing the paper book with their able assistance we are of the considered view that the second petition filed by Union of India is liable to be dismissed and the first petition filed by the land owners/interested persons deserves to be allowed. It is conceded position that the Ministry of Defence, sent a request to the State of Punjab on 10th July, 2002 to acquire the land for the department of defence by invoking the provisions of Section 17 of the Act, as the land in the border area was urgently required. A notification under Section 4 read with Section 17(2) was published by the State of Punjab in its Official Gazette (Annexure P-'2') and a further declaration was made under Section 6 read with Section 17(2) of the Act on 17th September, 2002 (Annexure P-'3'). Thereafter, acquisition cost of land was assessed and 80% of the estimated cost was kept at the disposal of the Collector for disbursement to the land owners etc. before taking possession. On 10th January, 2003 a request was made to the Collector to hand over the possession of the land to the Ministry of Defence. The Collector issued notice to the land owner under Section 9(1) on 7th July, 2004 and disbursed 80% of the acquisition cost to the land owners/interested person on 27th July, 2004. He simultaneously took over the possession from land owner/interested persons and handed it over to the Ministry of Defence. Then a draft award proposing the assessment of the market value of the land at Rs. 2,75,000 per acre was sent to the Ministry of

Defence. The Collector through the Deputy Commissioner as well as the Punjab Government requested for approval of the same. The long drawn correspondence ensued between the State of Punjab and its officers. Eventually the Ministry of Defence rejected the draft award,— *vide* order dated 2nd March, 2006 (Annexure P-‘23’). The order also suggested to the Punjab Government and its officers that it should announce award at the rate of Rs. 1,42,233 for village Korianwali and Rs. 1,74,060 for village Panchanwali.

(16) The correspondence regarding rate of land shows that the State of Punjab and its officers have adhered to the uniform rate of land situated in both the Villages at Rs. 2,75,000 whereas the Ministry of Defence had been suggesting much lower rate as has already been noticed. The dispute travelled to this Court as CWP No. 6034 of 2007 was filed by the Land Owners/interested persons.

(17) A perusal of the record of CWP No. 6034 of 2007 shows that the land owners/interested persons had prayed for quashing acquisition proceedings as the statutory period of two years for announcement of award had expired. They have also prayed for issuance of directions to the Union of India as well as to the State of Punjab to give their lands back to them.

(18) The Ministry of Defence contested the issue by taking categorical stand in their written statement. In para 6 it was alleged that the Collector has fixed an exorbitant value of the land @ Rs. 2,75,000 per acre whereas the market value of the land was much lower. In para 1 they further asserted that the amount of balance compensation was to be paid to the land owner/interested persons after the award is announced by the Collector. They also canvassed that the appropriate Government was the Ministry of Defence, Union of India under Section 11(1) and no award could have been announced without their prior approval. Despite the aforesaid objections raised the Division Bench allowed the petition on 10th December, 2007 and passed the following order.

“Learned counsel for the Union of India after referring to written statement filed on behalf of respondents No. 1

and 4 submits that the entire balance amount of 20% to the tune of Rs. 76,68,074 was deposited with the Special Land Acquisition Collector, Jalandhar, on 31st March, 2006 but the Land Acquisition Collector has not passed an award till date.

On due consideration of submission, we direct the Special Land Acquisition Collector, Jalandhar, with note of caution to pass award forthwith, within two weeks from the date of receipt of copy of this order, failing which, he may be held personally liable for delaying the passing of award.

As the grievance of the petitioner is confined to this limited prayer, which is met by passing the directions, the writ petition stands disposed of accordingly.”

(19) A perusal of the order shows that this Court did not go into the quantum of compensation and proceeded to direct the Collector to announce the award. In pursuance of the direction issued, the Collector announced the award on 31st January, 2008 (Annexure P-‘29’). A perusal of the award shows that same rates of the land of both the villages Korianwali and Panchanwali have been announced at the rate of Rs. 2,75,000.

(20) The first issue which requires determination is whether the directions issued by this Court in C.W.P. No. 6034 of 2007, directing the Collector to announce the award despite the contrary stand taken by the respondents would remain binding or it is open to Union of India to raise the issue of prior approval of the Central Government to the award announced by the Collector.

(21) Having bestowed our thoughtful consideration on the issue we are of the view in the first place that after passing of order by the Division Bench on 10th December, 2007, and issuance of directions to the Collector to announce award in terms of order, no room is left to once again raise the same issue all over again. The parties are bound

by the aforementioned directions which were issued in a petition where the Union of India through the Ministry of Defence was the party and its counsel was also present. The order was passed despite the same stand of the Union of India that prior approval of the Central Government was required and the Central Government is alone the competent authority under proviso to Section 11(1) read with Section 3(ee) of the Act. Therefore, the aforementioned issue is foreclosed and cannot be re-opened once again in these proceedings.

(22) We are also inclined to consider the question whether the Central Government or State of Punjab would be appropriate Government. It would, thus be necessary to first set out Section 3(ee) which defines the expression 'appropriate Government' :—

“3(ee) the expression “appropriate Government” means in relation to acquisition of land for the purposes of the Union, the Central Government and, in relation to acquisition of land for any other purposes, the State Government ;”

(23) A perusal of the section shows that when the land is acquired for the purposes of the Union then the Central Government is an appropriate Government and when the land is acquired for any other purpose then the State Government would be the appropriate Government. However, that would be the situation in the absence of any delegation. In the present case it is conceded position that the delegation order was passed by the Central Government on 22nd August, 1985 (P-1), which reads thus :—

“S.O. 617(E)—In exercise of the powers conferred by clause (1) of Article 258 of the Constitution of India and of all other powers enabling him in this behalf and in supersession of all previous notifications on the subject in so far as they relate to the State of Punjab, the President, with the consent of the Government of Punjab, hereby entrusts to that Government, the functions of the Central Government as under :—

1. the Land Acquisition Act, 1895 (1 of 1894) except the functions exercisable by the Central Government under

the proviso to sub-section (i) of Section 55 of the said Act, and

2. the Land Acquisition (Companies) Rules, 1963, in relation to the acquisition of land for the purposes of the Union in the State of Punjab.

Subject to the following conditions, namely—

- (a) that in the exercise of such functions, the Government of Punjab shall comply with such general and special directions as the Central Government may, from time to time, issue ; and
- (b) that notwithstanding the entrustment the Central Government, may itself exercise any of the said functions should it deem fit to do so in any case.”

(24) The aforementioned notification in unequivocal terms entrusted to the Government of Punjab the function of the Central Government under the Act. There is, thus, no doubt left that after the aforementioned delegation order, it is the State of Punjab which is the appropriate Government who has been entrusted with all the powers of the Central Government in respect of the Act.

(25) The respondents, in fact, are intermingling the issue by stating that approval of the Central Government was required because it has rejected the award,—*vide* order dated 2nd March, 2006 (P-23). However, the issue cannot be re-opened because it was thereafter that C.W.P. No. 6034 of 2007 was filed and the Union of India has taken a specific stand before this Court pleading that prior approval of the Central Government was required before announcement of the award. Despite the aforementioned stand this Court has directed the Collector, with a note of caution to pass the award forthwith and accordingly the award has been passed. The aforementioned order dated 10th December, 2007 passed by this Court has attained finality, which has been accepted by the Union of India because no appeal has been filed against that order. Once the aforementioned situation prevails then no doubt is left

that the issue with regard to seeking prior approval stands foreclosed cannot be re-opened once again by filing another petition.

(26) If we assume that the Central Government is the appropriate Government the order dated 2nd March, 2006 (Annexure P-‘23’ in the second petition) passed by the Government of India, Ministry of Defence then too it would not stand judicial scrutiny because Section 11 does not create an appellate forum by authorizing the appropriate Government to reject the award. It merely provides for an administrative action whereas the powers of the Collector are *quasi* judicial in nature. The matter is not *res integra*. In the case of **Vijaydevi Naval Kishore Bhatia versus Land Acquisition Officer (1)** the issue has been considered and the matter is referred to a larger bench of the Supreme Court. The crux of the issue is that in pursuance of power under Section 15-A the appropriate Government may call for the record of any proceeding before the award is made for the purpose of satisfying itself as to the legality or propriety of any finding and it may then pass an order or issue direction. According to the proviso the right of hearing to the land owner/interested persons has also been granted before the award is rejected and no such hearing was granted. Although the larger bench of the Supreme Court is yet to opine on the question with utmost respect yet we cannot help to follow the view because it emanates from statutory provisions. Therefore on that score also the Union of India is not found to be acting in accordance with Section 15A of the Act.

(27) For the reasons aforementioned, the second petition filed by the Union of India is dismissed and the first petition filed by the land owners/interested persons is hereby allowed. Accordingly, the Union of India through the Ministry of Defence is directed to deposit the balance amount of award with the Reference Court within a period of six weeks from the date of receipt of a certified copy of this order and the same shall be disbursed to the land owners/interested persons by the learned Reference Court within a period of two weeks from the date of its deposit with all consequential benefits as per law.

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**R.N.R.**

(1) (2003) S.C.C. 83