

appreciated if the petitioners are given an opportunity to become good citizens, by providing them immediate chance of appearing in the examination, and not spoiling their career any more. We also hope that the Committee would see the desirability of allowing the petitioners to appear in the next examination being held by the respondent-University. The Committee may also re-examine the cases of other students, who have not approached this Court, but who prefer to make representation to the respondents within a period of two weeks. Such representations, if any made, shall be disposed of by passing appropriate orders. Dasti.

J.S.T.

Before Hon'ble M. S. Liberhan & M. L. Koul, JJ.

TEJA SINGH & OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB & ANOTHER,—*Respondents.*

C.W.P. No. 3196 of 1995

27th November, 1995

Constitution of India, 1950—Arts. 226/227—Land Acquisition Act, 1894—Ss. 11, 11-A, 17—Urgency provisions invoked—Possession taken—80 per cent of compensation paid at the time of taking possession—Award under S. 11-A after a period of 2 years from S. 6 notification—Delay in making award not to vitiate proceedings.

Held, that the title remains with the owners till the award is pronounced under Section 11 of the Act, while in case of invoking of provisions of Section 17 (1) of the Land Acquisition Act, it comes to end when the possession is taken and the property vests in the State free from encumbrances. Thus, where the urgency provisions are invoked, the provisions of Section 11-A of the Act would not be attracted.

(Para 6)

Constitution of India, 1950—Arts. 226/227—Land Acquisition Act, 1894—S. 11—Sanction of State Government—Under section 11 not sought—Non-compliance of provision of S. 11 would not render award non-est when post facto approval sought and land already stands vested with State Government.

Held, that non-compliance of the provisions of Section 11 while pronouncing the award would not render the award as non-est

particularly, when the *post facto* approval has been taken, which be due compliance of provisions of Section 11 of the Act, in totality of facts and circumstances wherein the acquired land has already vested in the State. Taking of the prior approval or *post facto* approval would in the facts and circumstances, not result in any injustice to the petitioners. There is a substantial compliance of Section 11 of the Act.

(Para 6)

V. K. Kataria, Advocate, for the Petitioner.

M. C. Berry, D.A.G., Punjab, for the Respondent.

JUDGMENT

M. S. Liberhan, J.

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This order will dispose of C.W.P. Nos. 9006 and 5349 of 1995 also, as common questions of law are involved in all these petitions.

(2) Briefly in seriatim and chronological order the facts in order to deal with the challenge by the petitioners to the acquisition of their land measuring about 22 Bighas are : the notifications under Sections 4 and 6 were issued for acquisition of the land on 6th April, 1992 and 8th April, 1992 respectively. The urgency provisions for acquisition of the land as provided under section 17 of the Land Acquisition Act (hereinafter referred to as the Act) were invoked, dispensing with the procedure for affording an opportunity of hearing to the persons interested under Section 5-A of the *ibid* Act. Notifications were published in the newspapers and lastly in the locality on 6th June, 1992. As a consequence of the acquisition proceedings, 80 per cent of the compensation qua the acquired land was paid to the persons interested on 26th April, 1993/3rd June, 1993, and possession was taken over. The land was further given to the allottees on 3rd June, 1994. Award was pronounced on 11th October, 1994 and balance amount of compensation to the tune of 20 per cent was offered

(3) Learned counsel for the petitioners impugned the acquisition proceedings *inter-alia* contending, since the award was pronounced after lapse of two years after section 6 notification, consequently in view of provisions of Section 11-A of the Act, the acquisition proceedings elapsed by afflux of time. It is further contended, no award can be passed without the prior approval of the State Government, while herein the approval of the Financial Commissioner, Revenue was taken *post-facto*, which is in violation of Rule 41 of the Financial

Commissioner Standing Order No. 28. Thus no award would be deemed to have been passed. In order to support his contention, learned counsel for the petitioner has relied on *State of U.P. & others etc. v. Rajiv Gupta & another etc.* (1), it was observed :—

“X X X X If the award exceeds the limit, prior approval of the State Governments or authorised officer is mandatory. Any award made in violation thereof, renders the award non-est and void as it hinges upon the jurisdiction of the land acquisition Collector or Officer. No doubt, Mr. Markandey is right that the State had not produced before us rules or orders issued under the first proviso to Section 11 that the Land Acquisition Officer shall not make an award exceeding one crore of rupees without prior approval of the Commissioner, namely, Commissioner Board of Revenue. But nonetheless there is a statutory inhibition by first proviso to Section 11 that the prior approval either of the appropriate Government or of an officer which the appropriate Government authorises in that behalf, is mandatory for making an award. It is a condition precedent. X X X”.

The condition of prior approval either of the appropriate Government or an Officer authorised by the appropriate Government is mandatory.

(4) Learned counsel for the respondents has refuted the submission made by the learned counsel for the petitioner and contended that the provisions of Section 11-A of the Act would not apply, in as much as the urgency provisions under Section 17 of the Act were invoked, 80 per cent of the compensation was paid, possession was taken and the land stood vested in the State free from all encumbrances. Learned counsel for the respondents in support of his contention has relied on *Satendra Prasad Jain & others v. State of U.P. & others* (2).

(5) We have considered the arguments of the learned counsel for the parties. The law laid down by Hon'ble the Supreme Court in *Satendra Prasad Jain's case* (Supra) in verbatim runs as under :

“The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a

(1) 1994 (2) All India Land Laws Reporter 527.

(2) J.T. 1993 (5) S.C. 385.

period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the land have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.”.

It was further observed :

“Further, Section 17 (3-A) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it under Section 17 (1), Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.”

(6) As a necessary corollary of the law laid down by Hon'ble the Supreme Court it comes to that the title remains with the owners till the award is pronounced under Section 11 of the Act, while in case of invoking of provisions of Section 17 (1) of the Act, it comes to end when the possession is taken ; and the property vests in the State free from encumbrances. Thus where the urgency provisions are invoked, the provisions of Section 11-A of the Act would not be attracted. Non-compliance of the provisions of Section 11 while pronouncing the award would not render the award as non-est particularly, when the *post facto* approval has been taken, which in our considered view would be due compliance of provisions of Section 11 of the Act, in totality of facts and circumstances wherein the acquired land has already vested in the State. Taking of the

prior approval or *post facto* approval would in the facts and circumstances, not result in any injustice to the petitioners. There is a substantial compliance of Section 11 of the Act.

(7) If it is assumed that no valid award was given because of the requirement of prior approval of the State, it would not be in the interest of justice to interfere in exercise of writ jurisdiction, when the petitioners are owners only of a fraction of the total acquired land, their having received 80 per cent compensation in 1993 without raising a little finger, delivered possession, award pronounced, balance of the compensations received by almost all the owners or the persons interest claimed enhancement of the compensation under section 18 of the Act, land in dispute vested in the State free from all encumbrances, and further allotted to the persons, and the provisions providing limitation for announcing the award would not be applicable.

(7) There is no dispute with proposition of law laid down by Hon'ble the Supreme Court in *State of U.P. & others v. Rajiv Gupta and another* (supra). The observations made/law laid down therein were in view of the peculiar facts and circumstances of the said case. i.e. where the provisions of Section 11 and 11-A were applied, the urgency provisions were not invoked. In the said case no compensation was paid before the award is made, possession taken and title *qua* the land in dispute not vested in the state till the possession taken inspite of the award having been pronounced.

In view of the observations made above, the writ petition is dismissed with no order as to costs.

J.S.T.

Before Hon'ble G. S. Singhvi & T.H.B. Chalapathi, JJ.

SURINDER SINGH,—Petitioner.

versus

STATE OF HARYANA & OTHERS,—Respondents.

C.W.P. No. 12478 of 1995.

29th November, 1995.

Constitution of India, 1950—Arts. 226/227—Haryana Government instructions dated 8th May, 1995—Clause 2(iv)—Compassion