

Before Jasbir Singh & Augustine George Masih, JJ.

ASHA DEVI,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

CWP No. 4658 of 2010

15th September, 2010

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—S. 18—Punjab Municipal Act, 1911—S. 192(2)—Acquisition of petitioner's land under Town Planning Scheme w/s 192(2) of 1911 Act—Claim for higher compensation—Application for making reference w/s 18 of 1894 Act— Whether maintainable when land has been acquired under 1911 Act—Held, yes—S. 224(2) of 1911 Act itself provides for applicability of 1894 Act wherever any dispute arise touching amount of compensation with reference to acquisition of and payment of compensation for land acquired for public purpose—Petition allowed with costs, order passed by Commissioner MC holding application of petitioner not maintainable quashed.

Held, that a perusal of Section 192(1) of the Municipal Act would show that among other things provided under the scheme, the matters, as mentioned in sub-clauses (a), (b) and (c) are also required to be provided. As per clause (c), the amount of land, which shall be transferred to the committee for public purposes including use as public streets by the owners of the land on payment of compensation, has to be provided, Clause (4) of this Section further provides that the State Government, on sanction of such scheme as made by the Municipal Corporation, would satisfy the cost of the scheme, which may be defrayed from the municipal fund, meaning thereby that the compensation has to be paid by the Municipal Corporation of the land acquired. In the present case, the Municipal Corporation has, as a matter of fact, paid compensation to the petitioner to the extent of 75% of the land acquired.

(Para 14)

Further held, that Section 224 of the Municipal Act deals with the payment of compensation to be made by the Municipal Corporation from the municipal funds. Clause (1) thereof primarily deals with the damages sustained by reason of the exercise of any power vested with the committee, its officers and servants under the Municipal Act. Clause (2) of this Section deals with a situation where any dispute arise touching the amount of any compensation which the Committee is, by this Act, required to pay or empowered to receive for injury to or in respect of any building or land, for settlement of which no express provision is made by any other section of the Act, it shall be settled in the absence of any agreement in the manner provided by the Act, 1894 with reference to acquisition of and payment of compensation for land for public purposes so far as it can be made applicable.

(Para 15)

Further held, that the Land Acquisition Act, 1894 would apply wherever any dispute arise touching the amount of any compensation with reference to acquisition of and payment of compensation for land or building acquired for public purpose under the Punjab Municipal Act, 1911, by the Municipal Corporation in the absence of any agreement between the parties. In the present case, there is no agreement between the petitioner and the Municipal Corporation and thus, the application dated 5th August, 1991 preferred by the petitioner for making reference under Section 18 of the Land Acquisition Act, 1894 would be maintainable.

(Para 17)

Vivek Goyal, Advocate, *for the petitioner.*

Ms. Sudeepti Sharma, Sr. DAG, Punjab, *for respondent No. 1.*

Rahul Sharma, Advocate, *for respondents No. 2 and 3.*

AUGUSTINE GEORGE MASIH, J.

(1) Through this writ petition the petitioner craves the indulgence of this Court for quashing the order dated 4th March, 2009 (Annexure P-7) passed by the Commissioner, Municipal Corporation, Bathinda-respondent No. 2,—*vide* which the application dated 5th August, 1991 moved by

the petitioner for reference of the matter to the appropriate Court treating it to be under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act, 1894) has been declined on the ground that the land of the petitioner was not acquired under the Land Acquisition Act, therefore, the said application is not maintainable as the Act, 1894 is not applicable to the acquisition which has been made by the Municipal Corporation, Bathinda. Prayer has further been made for issuance of a writ of mandamus directing the respondents to make a reference under Section 18 of the Act, 1894 to the District Judge for determination of the market value of the land measuring 192 sq. yards, belonging to the petitioner acquired by the Municipal Corporation under the Town Planning Scheme No. 3 Part II, Bathinda for construction of 100 wide road.

(2) Briefly the facts of the case are that the petitioner purchased land measuring 192 sq. yards. comprising in Khewat No. 1776, Khasra No. 2453/3/1 in the revenue estate of Bathinda,—*vide* registered sale deed dated 29th July, 1975. The name of the petitioner was entered in the revenue records and stood reflected in the Jamabandi for the year 1982-83. The Municipal Corporation, Bathinda Respondent No. 2 framed a Town Planning Scheme known as Area No. 3 Part 2 for constructing a 100' wide road under Section 192(2) of the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Municipal Act'). A public notice was published in The Tribune on 22nd May, 1979 regarding the scheme and objections were invited to the scheme. The petitioner filed objections before the competent authority, which were rejected,—*vide* order dated 12th September, 1979 (Annexure P-2), according to which, the petitioner was held entitled for payment of compensation for the land beyond 25% of the area. *Vide* letter dated 18th January, 1989, respondent No. 2 wrote letter to the District Collector, Bathinda that the price of the land of the petitioner prevailing as on 21st October, 1995 may be determined, which was determined on 31st August, 1989 at Rs. 26.50 per sq. yard and *vide* order dated 24th April, 1990, respondent No. 2, after cutting 25% land, granted compensation of Rs. 3,016 for the remaining land i.e. 144 sq. yard. The said amount was disbursed *vide* cheque No. 850297 dated 9th July, 1991 as compensation for land of the petitioner. The petitioner accepted the same but under protest.

(3) Feeling aggrieved against the inadequacy of the compensation and non-grant of compensation for 25% of the land, the petitioner preferred a representation dated 05th August, 1991 to respondent No. 2 for making a reference under Section 18 of the Act, 1894 (Annexure P-3). In the said representation, the petitioner prayed that the compensation for her total plot measuring 192 sq. yard, which has been acquired, should be paid to her and the price of the land is not less than Rs. 500 per sq. yard. Apart from enhanced rate of the land, mandatory statutory benefits under the Act, 1894 were also claimed. A request was also made that the reference be sent to the District Judge, Bathinda at the earliest. On consideration of this application, respondent No. 2 passed a Resolution No. 439, dated 4th February, 1994 stating therein that the rates fixed by the Collector are correct. However, the application filed by the petitioner under Section 18 of the Act, 1894 be sent to the Collector so that action be taken in accordance with law and case be sent to the competent Court as per law.

(4) The application of the petitioner along with the copy of the resolution was sent to the Collector, Bathinda,—*vide* letter, dated 5th May, 1994 by respondent No. 2 for further action. The Collector, Bathinda returned the application along with resolution to respondent No. 2 stating therein that the case has to be sent by the concerned Land Acquisition Collector to the appropriate Court. The office of respondent No. 2 took opinion from the Legal Assistant, who opined that the Municipal Corporation has already paid the amount to the claimant in 1991, so her present claim is not within limitation. Let her go to the Court for her claim. The petitioner was informed about the said opinion,—*vide* letter dated 4th October, 1999. On receipt of the same, the petitioner preferred representation dated 15th November, 1999 (Annexure P-5) to the President of respondent No. 2 again praying therein that the reference be made to the District Judge, Bathinda under Section 18 of the Act, 1894 as she had no other alternative remedy except to prefer an application for reference under the Act, 1894.

(5) When nothing was heard from the respondents, the petitioner approached this Court by filing CWP No. 16728 of 2007, wherein the following order was passed on 1st November, 2007 :—

“Learned counsel for the petitioner submits that the petitioner would be satisfied if the respondents decide and refer the application of the petitioner dated 5th August, 1991 (Annexure P-3) filed

under Section 18 of the Land Acquisition Act, to the appropriate Authority, for consideration and disposal. Hence, the Civil Writ Petition is disposed of with directions to the respondents to consider and refer the application of the petitioner under Section 18 of the Act to Competent Authority for disposal within a period of two weeks from receipt of a copy of this order. The writ petition stands disposed of accordingly.”

(6) The petitioner thereafter filed a representation (Annexure P-6), dated 4th December, 2007 along with the copy of the order passed by this Court in the writ petition for necessary action. The Commissioner, Municipal Corporation, Bathinda-respondent No. 2 requested the petitioner to appear for personal hearing on 30th January, 2009. The petitioner appeared and submitted her claim. The representation of the petitioner dated 5th August, 1991 was considered and rejected by the Commissioner, Municipal Corporation, Bathinda holding therein that the land of the petitioner was not acquired under the Act, 1894 and, therefore, reference under Section 18 of the said Act for compensation is not maintainable. It is this order, which is under challenge in the present writ petition.

(7) Counsel for the petitioner contends that the facts in the case are not in dispute. It is not in dispute that the land of the petitioner was acquired under the Town Planning Scheme framed under Section 192(2) of the Municipal Act. He contends that there is no express provision made in the Act dealing with the disputes for settlement of the amount of compensation granted to the owners of the land, whose land is acquired. Section 224(2) of the said Act clearly states that in such a situation, the provisions of the Act, 1894 would be applicable. He, on this basis, prays for quashing of the impugned order rejecting the application of the petitioner for reference under Section 18 of the Act, 1894 (Annexure P-7) and for allowing the writ petition by issuing a direction to the respondents to refer the matter to the appropriate Court for determination of the market value of the land.

(8) On the other hand, counsel for respondents No. 2 and 3 contends that the petitioner was paid a sum of Rs, 3,816 in the year 1991, which was accepted by her without protest and she is now estopped from challenging the same. The claim of the petitioner suffers from delay and

laches and, therefore, no relief can be granted by this Court. He contends that the land of the petitioner was not acquired under the provisions of the Act, 1894 and the same was transferred to respondent No. 2 for a public purpose i.e. for building of 100' wide road under Section 192(1)(c) of the Municipal Act and, therefore, the Act, 1894 does not apply and thus, no reference can be claimed by the petitioner under the said Act. He, on this basis, prays that the writ petition deserves to be dismissed and the impugned order upheld.

(9) We have heard counsel for the parties and have gone through the records of the case.

(10) The first contention of the counsel for respondents No. 2 and 3 is that the petitioner is estopped from claiming the higher compensation because she had accepted the compensation of Rs 3,816 without any protest. The contention of the counsel for respondents No. 2 and 3 cannot be accepted as it is apparent from the impugned order itself that the petitioner,—*vide* application dated 10th February, 1986, had claimed compensation after the rejection of her objections @ Rs. 250 per sq. yard, whereas the amount determined by the Land Acquisition Collector was 26.50 per sq. yard. Further this payment was made on 9th July 1991 through cheque No. 850297 and the petitioner had immediately preferred an application dated 5th August, 1991 seeking reference under Section 18 of the Act, 1894 to the District Judge, Bathinda for determination of the market value of the land of the petitioner (Annexure P-3), the petitioner had claimed compensation @ Rs. 500 per sq. yard. apart from the other statutory benefits as provided under the Act, 1894. Not only this, the petitioner had also challenged the non-payment of the compensation of 25% of her land, which was deducted as per the proviso of Section 192 (2) of the Municipal Act, on the ground that the same could not be done. Thus, the contention of the counsel for respondents No. 2 and 3 stands rejected.

(11) Counsel for respondents No. 2 and 3 has made an effort to deprive the petitioner of the claim made in the present writ petition on the ground of delay and laches, which again cannot be sustained. A perusal of the facts, as have been stated above, would show that the payment of compensation was made to the petitioner on 9th July, 1991. The petitioner had preferred an application dated 5th August, 1991 for making reference

under Section 18 of the Act, 1894 to the District Judge, Bathinda. Thereafter, the application of the petitioner has, all through, been under consideration of the Municipal Corporation and other departments/authorities. No decision had been taken on the representation of the petitioner by the competent authority and it is only after the writ was preferred by the petitioner in the year 2007 and on a direction issued by this Court that the competent authority had decided the representation of the petitioner dated 5th August, 1991, which was conveyed to the petitioner,—*vide* letter dated 4th March, 2009 (Annexure P-7). There is thus no delay on the part of the petitioner in preferring an application for consideration of her claim. After the decision by the competent authority i.e. the Commissioner, Municipal Corporation, Bathinda, the petitioner immediately preferred the present writ petition.

(12) The question, which now requires consideration by this Court, is “whether the application dated 5th August, 1991 preferred by the petitioner for making reference under Section 18 of the Act, 1894 would be maintainable when the land has not been acquired under the Land Acquisition Act but under the Punjab Municipal Act, 1911?”

(13) For decision on this question, Section 192 and Section 224 of the Municipal Act would be relevant, which read as follow :—

“192. Building Scheme.—(1) The committee may, and if so required by the Deputy Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas which may among other things provide for the following matters, namely :—

- (a) The restriction of the erection or re-erection of buildings or any class of buildings in the whole or any part of the municipality, and of the use to which they may be put :
- (b) the prescription of a building line on either side or both sides of any street existing or proposed; and
- (c) the amount of land in such unbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total

amount so transferred shall not exceed thirty-five per cent, and the amount transferred without payment shall not exceed twenty-five per cent, of any one owner's land within such unbuilt area.

- (2) When a scheme has been drawn up under the provisions of sub-section (1) the committee shall give public notice of such scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.
- (3) The committee shall consider every objection or suggestion with regard to the scheme which may be received by the date estimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Deputy Commissioner who may, if he thinks fit, return it to the committee for reconsideration and resubmission by a specified date ; and the Deputy Commissioner shall submit the plans as forwarded, or as resubmitted, as the case may be, with his opinion to the State Government, who may sanction such scheme or may refuse to sanction it, or may return it to the committee for reconsideration and resubmission by a specified date.
- (4) If a committee fails to submit a scheme within six months of being required to do so under sub-section (1) or fails to resubmit a scheme by a specified date, when required to do so under sub-section (3) or resubmits a scheme which is not approved by the State Government, the Deputy Commissioner draw up a scheme of which public notice shall be given by notification and by publication within the municipality together with an intimation of the date by which any person may submit in writing to the Deputy Commissioner any objection or suggestion which he may wish to make, and the Deputy Commissioner shall forward with his opinion any such objection or suggestion to

the State Government, and the State Government may sanction such scheme as originally notified or modified in consequence of any such objection or suggestion, as the State Government may think fit ; and the cost of such scheme or such portion of the cost as the State Government may deem fit shall be defrayed from the municipal fund.

- (5) When sanctioning a scheme the State Government may impose conditions for the submission of periodical reports on the progress of the scheme to the Deputy Commissioner or to the State Government, and for the inspection and supervision of the scheme by the State Government.

224. Payment of compensation.—(1) The committee may make compensation out of the municipal fund to any person sustaining any damage by reason of the exercise of any of the powers vested in the committee, its officers and servants under this Act, and shall make such compensation where the damage was caused by the negligence of the committee, its officers or servants and the person sustaining the damage was not himself in default in the matter in respect of which the power was exercised.

- (2) Should any dispute, for the settlement of which no express provision is made by any other section, arise touching the amount of any compensation which the committee is by this Act required to pay or empowered to receive for injury to or in respect of any building or land, it shall be settled in such manner as the parties may agree, or, in default of agreement, in the manner provided by the Land Acquisition Act, 1894, with reference to the acquisition of and payment of compensation for land for public purposes so far as it can be made applicable.”

(14) A perusal of Section 192(1) of the Municipal Act would show that among other things provided under the scheme the matters, as mentioned in sub-clauses (a), (b) and (c) are also required to be provided. As per clause (c), the amount of land, which shall be transferred to the committee for public purpose including use as public streets by the owners of the land on payment of compensation, has to be provided. Clause (4) of this Section further provides that the State Government, on sanction of

such scheme as made by the Municipal Corporation, would satisfy the cost of the scheme, which may be defrayed from the municipal fund, meaning thereby that the compensation has to be paid by the Municipal Corporation of the land acquired. In the present case, the Municipal Corporation has, as a matter of fact, paid compensation to the petitioner to the extent of 75% of the land acquired.

(15) Section 224 of the Municipal Act deals with the payment of compensation to be made by the Municipal Corporation from the municipal funds. Clause (1) thereof primarily deals with the damages sustained by reason of the exercise of any power vested with the committee, its officers and servants under the Municipal Act. Clause (2) of this Section deals with a situation where any dispute arise touching the amount of any compensation which the committee is, by this Act, required to pay or empowered to receive for injury to or in respect of any building or land, for settlement of which no express provision is made by any other section of the Act, it shall be settled in the absence of any agreement in the manner provided by the Act, 1894 with reference to acquisition of and payment of compensation for land for public purpose so far as it can be made applicable.

(16) It is an admitted position before us that there is no specific and express provision under the Act dealing with the dispute touching the amount of any compensation for acquisition of and payment of compensation for land for public purposes. In such a situation, it is provided under this clause that should any dispute of this nature arise with regard to the amount of compensation which the committee has to pay, the same will be decided in the manner provided by the Act, 1894. Specifically, it has further been provided that the Act, 1894 would apply with reference to the acquisition of and payment of compensation for land acquired for public purposes. Thus, the contention of the counsel for respondents No 2 and 3 Municipal Corporation that the provisions of the Land Acquisition Act would not be applicable as the acquisition has not been made under the Land Acquisition Act, is under a misconceived notion. Section 224 (2) of the Municipal Act itself provides for applicability of the Act, 1894 wherever there is a dispute touching the amount of compensation with reference to acquisition of and payment of compensation for land acquired for public purpose. It would not be out of way to mention here that nothing has been mentioned with regard to the limit of the applicability of the Act, 1894, which finds mention in Section 224(2) of the Municipal Act before us.

(17) In the answer to the question, it is held that the Act, 1894 would apply wherever any dispute arise touching the amount of any compensation with reference to acquisition of and payment of compensation for land or building acquired for public purpose under the Punjab Municipal Act, 1911, by the Municipal Corporation in the absence of any agreement between the parties. In the present case there is no agreement between the petitioner and the Municipal Corporation and thus, the application dated 5th August, 1991 preferred by the petitioner for making reference under Section 18 of the Land Acquisition Act, 1894 would be maintainable.

(18) In view of the above, the impugned order passed by the Commissioner, Municipal Corporation, Bathinda, which was conveyed to the petitioner,—*vide* letter dated 4th March, 2009 (Annexure P-7), cannot be sustained and deserves to be set aside.

(19) Accordingly, the present writ petition is allowed. The impugned order dated 4th March, 2009 (Annexure P-7) passed by the Commissioner, Municipal Corporation, Bathinda-respondent No. 2 is hereby quashed. Cost of Rs. 10,000 is imposed on respondents No. 2 and 3.

(20) A direction is issued to the repondents to make a reference under Section 18 of the Act, 1894 to the competent Court and costs paid within a period of two months' from the date of receipt of certified copy of this order.

R.N.R.