

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 13077 OF 2017
(Arising out of SLP(C) No. 34957 of 2010)

KARNAL IMPROVEMENT TRUST, KARNAL

APPELLANT(S)

VERSUS

SURINDER KUMAR ORS

RESPONDENT(S)

WITH

CIVIL APPEAL No(s). 13078 OF 2017
(Arising out of SLP(C) Nos. 35079 OF 2010)

CIVIL APPEAL No(s). 13079 OF 2017
(Arising out of SLP(C) Nos. 35109 OF 2010)

CIVIL APPEAL No(s). 13081 OF 2017
(Arising out of SLP(C) Nos. 35336 OF 2010)

CIVIL APPEAL No(s). 13082 OF 2017
(Arising out of SLP(C) Nos. 35291 OF 2010)

CIVIL APPEAL No(s). 13080 OF 2017
(Arising out of SLP(C) Nos. 35135 OF 2010)

CIVIL APPEAL No(s). 13086 OF 2017
(Arising out of SLP(C) Nos. 1741 OF 2011)

CIVIL APPEAL No(s). 13090 OF 2017
(Arising out of SLP(C) Nos. 1803 OF 2011)

CIVIL APPEAL No(s). 13095 OF 2017
(Arising out of SLP(C) Nos. 1806 OF 2011)

CIVIL APPEAL No(s). 13098 OF 2017
(Arising out of SLP(C) Nos. 1821 OF 2011)

CIVIL APPEAL No(s). 13102 OF 2017
(Arising out of SLP(C) Nos. 1819 OF 2011)

CIVIL APPEAL No(s). 13101 OF 2017
(Arising out of SLP(C) Nos. 1823 OF 2011)

CIVIL APPEAL No(s) . 13100 OF 2017
(Arising out of SLP(C) Nos.1818 OF 2011)

CIVIL APPEAL No(s) .13084 OF 2017
(Arising out of SLP(C) Nos. 1739 OF 2011)

CIVIL APPEAL No(s) .13085 OF 2017
(Arising out of SLP(C) Nos. 1742 OF 2011)

CIVIL APPEAL No(s) .13099 OF 2017
(Arising out of SLP(C) Nos.1822 OF 2011)

CIVIL APPEAL No(s) . 13083 OF 2017
(Arising out of SLP(C) Nos.1736 OF 2011)

CIVIL APPEAL No(s) . 13089 OF 2017
(Arising out of SLP(C) Nos.1748 OF 2011)

CIVIL APPEAL No(s) . 13087 OF 2017
(Arising out of SLP(C) Nos.1744 OF 2011)

CIVIL APPEAL No(s) . 13092 OF 2017
(Arising out of SLP(C) Nos.1805 OF 2011)

CIVIL APPEAL No(s) . 13094 OF 2017
(Arising out of SLP(C) Nos.1810 OF 2011)

CIVIL APPEAL No(s) . 13093 OF 2017
(Arising out of SLP(C) Nos.1811 OF 2011)

CIVIL APPEAL No(s) . 13097 OF 2017
(Arising out of SLP(C) Nos.1820 OF 2011)

CIVIL APPEAL No(s) . 13088 OF 2017
(Arising out of SLP(C) Nos.1747 OF 2011)

CIVIL APPEAL No(s) . 13091 OF 2017
(Arising out of SLP(C) Nos.1804 OF 2011)

CIVIL APPEAL No(s) . 13096 OF 2017
(Arising out of SLP(C) Nos.1807 OF 2011)

CIVIL APPEAL No(s) . 13103 OF 2017
(Arising out of SLP(C) Nos.6045 OF 2011)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The cases have had a chequered history. Way back on 7.9.1973, by the issuance of notification under Section 36 of the Punjab Town Improvement Act, 1922, the acquisition of the land had been initiated. The relevant date for determining compensation was 7.9.1973, the date of issuance of said Notification.

The Award was passed by Land Acquisition Collector on 24.5.1976, determining compensation at the rate of Rs.200 per sq. yard for the area under Category A, and at Rs.100 per sq. yard for the area under Category B. The matter was taken to the Tribunal constituted under the Town Improvement Act. The Tribunal determined compensation at the rate of Rs.1336/- per sq. yard. Other awards were also passed.

The Single Judge of High Court affirmed the determination made by the Tribunal vide judgment and order dated 15.9.1989.

Aggrieved thereby, the LPAs were preferred, the Division Bench dismissed the same on 29.4.1991.

Aggrieved thereby appeals had been preferred in this Court. In the said appeals, this Court by its judgment and

order dated 11.9.1991, had doubted the findings recorded by the Tribunal with respect to the ownership of the Phar land, and the matter was remitted back to the Tribunal for determining the case afresh. The part relating to the determination of compensation was not upheld by this court, and the remand was not a limited remand. All the questions were kept open. This court again remitted the remaining left out matters to Tribunal on 9.9.1995 and held that due to want of Coram, the presiding officer was not competent to decide the case. After remand of the matter, a fresh decision had been rendered by the Tribunal on 4.5.2002. Tribunal determined the compensation at the rate of Rs.1336/- per sq. yard.

Being aggrieved by the order dated 4.5.2002, the writ petition was preferred before the High Court. The High Court remitted the case back to the Tribunal again on 24.7.2003. Thereafter, the Tribunal decided the matter third time by order dated 28.9.2004 and determined the price at the rate of Rs.580/- per sq. yard.

Whereas in the appeal, the High Court had relied upon the decision of this court, which was rendered while remanding the matters to the Tribunal; passed in the year 1991. In so relying upon the said order, the High Court held that this court had not disturbed the valuation, as determined by the

Tribunal, of Rs.1336/- per sq. yard. Hence, the High Court has awarded compensation at the rate of Rs.1336/- per square yard; without going into the reasoning employed by the Tribunal for determining compensation at the rate of Rs.580/- per sq. yard.

This is how the appeals and cross-appeals have been filed, questioning the determination made by the High Court.

Learned counsel appearing on behalf of the appellant-Trust has raised four submissions; firstly, that the determination made by the High Court is based upon the decision of this court whereas, this court had made a remand and kept all questions open in 1991 and then remitted the matters to the Tribunal. This court had not then affirmed the finding of determination of compensation recorded by the High Court in the earlier round of litigation while passing the order in the year 1991.

Secondly, learned counsel has submitted that it was not appropriate to apply the amended provisions of Section 23(1)(a) of the Act, as in the instant cases the Award had been passed in the year 1976 by the Land Acquisition Officer. He has relied upon the decision of this court in *K.S. Paripoornan v. State of Kerala* (1994) 5 SCC 593.

Learned counsel thirdly submitted that it was not within the domain of the reference court, in a reference sought under Section 18 of the Act, to direct allotment of the

shops; that too at the rate of Rs.5,000/- per plot. Learned counsel has taken us to the Award which was passed in 1976 in which the plot was ordered to be given in lieu of compensation to an incumbent who had not claimed any compensation. Learned counsel has further submitted that there was no such policy under which compensation, as well as allotment of plots, could have been claimed at the same time. It was not within the ken of jurisdiction of the reference court to direct the payment of compensation as well as allotment of the plot at the rate of Rs.5000/- per plot.

Fourthly, learned counsel has urged that the finding in relation to the determination of the ownership with respect to Phar land was not correct. The Trust was the owner of the area which has been utilised in the street and that road was being maintained by the Trust. They have provided street together also. Thus compensation could not have been awarded in respect to the Phar area.

On the other hand, learned counsel appearing on behalf of the respondents-owners contended that compensation granted by the High Court as well as by the Tribunal is on the lower side. Owners were entitled to much higher compensation. It was also submitted that the compensation under Section 23 (1) (a) has been rightly ordered to be paid in the peculiar facts of this case. The question of the ownership of the Phar

land has been rightly decided. No case for interference in the finding of fact as to ownership was made out. Apart from that, with respect to the allotment of plot, there was an undertaking given. Therefore, the direction of the High Court was proper and no case for interference was made out with respect to the said direction also.

Coming to the first question with respect to the determination of the compensation, we find that various sale deeds were on record and taken into consideration by the Tribunal:

S.NO.	Exhibit No.	Date of sale	Area sold (in sq.yard)	Total price	Rate per square yard
1	Ex.A-30 in Kartar Singh's case	30.03.1973	25	40,000/-	1,600/-
2.	Ex A-28 in Kartar Singh's case	30.03.1973	33	48,000/-	1,454/-
3.	Ex A-36 in Kartar Singh's case	20.07.1972	20	20,000/-	1,000/-
4.	Ex A-13 in Kartar Singh's case	27.11.1968	21.5	23,000/-	1,069/-
5.	ExP1 in Parkash Wanti's case	04.01.1973	50	16,123/-	323/-
6.	ExR-23 in Parkash Wanti's case	24.07.1972	46.66	10,000/-	214/-
7.	Ex.R-25 in Parkash Wanti's case	11.10.1972	50	20,000/-	400/-
8.	ExA-22 in Kartar Singh's case	12.07.1973	102 348.16 Sq.yard	25,000/- 2,02,123/-	245/-

There are some more sale deeds which have been relied upon on behalf of the owners, particularly sale transaction P36 dated 26.6.1976 has been relied upon, relating to a shop situated 18 yards away from the acquired land, and in that the land was sold at the rate of Rs.3091/- per sq. yard.

The Tribunal while assessing the value, considered the sale deeds particularly A30, A28, and A13 and observed:

"41. It may be mentioned here that subject matter of sale deeds Ex.P.-1, ExA-30 and Ex.A-28 as discussed above pertain to the same property. Admittedly the same was owned by two partners and after partition one of the partners sold his share vide sale deed dated 04.01.1973 Ex.P-1 at the rate of 323/- per square yard whereas the second partner had sold the area of his land vide sale deed dated 30.03.1973 Ex.A-30 and Ex.A-28 at the rate of Rs.1600/- and Rs.1445/- per Square yard respectively. Hence the difference in rate in the sale deeds just within 2/3 months is very much on the higher side. Further, so far as sale deed Ex.A30 is concerned, there is a recital that the same is regarding newly built up shop with Thara. There is also recital in Ex.R-23 that possession of the shop was already with the vendee. Sale Deed Ex.A-13 is of dated 27.11.1968 and however other sale deeds executed few months before the date of notification were of much lesser price and hence it could not be said that there was a rising trend of prices regarding the acquired land. Hence there is no force in the arguments of learned counsel for the petitioners/claimants that escalation at the rate of 12 percent per year for five years should be added for determining the market value. Sale transactions on which reliance has been placed on behalf of the petitioners-claimants are regarding very small areas. However, as the Notification. of the some of the claimants, acquired by the respondent trust, is also very small the same can be taken into consideration. However, in view of these facts none of the sale transactions, discussed

above, can be taken as the market value of the entire acquired land. The best way for determining the market value of the land on the date of notification is the average rate per square yard taking total area sold vide aforementioned sale transactions and total sale price paid for the said sale transactions."

The Tribunal has awarded compensation at the rate of Rs.580/- per sq. yard. Even if we take into consideration the sale deed of 1971 in which value has been shown to be Rs.3,000/- and take into consideration the various other aforesaid sale deeds which have been considered by the Tribunal, it appears that compensation awarded by the Tribunal was on the lower side.

Before arriving at the finding with respect to the price, we deem it appropriate to observe that High Court ought to have considered the merits of the determination made by the Tribunal; as this court in earlier round in the year 1995, had remanded the matter to the Tribunal due to *Coram non judice*, meaning thereby that the entire determination, including the compensation part, was illegal and non-est in the eye of law. It was not a determination legally recognizable. When Tribunal itself was found incompetent to take the decision, obviously its determination of compensation did not survive. When we consider the order of 1991, though this court had adversely commented upon determination of the question of ownership of Phar land, nowhere it confirmed the price that

was determined by the Tribunal; and in the last para, it was observed, that all questions were kept open. The High Court has thus gravely erred in law in relying upon the decision of this court to arrive at compensation. As this court in first round kept all questions open and determination made was set aside due to *Corum non-judice*, as such the earlier determination was not at all judicially acceptable. It was incumbent upon the High Court to consider the question on merits, but that has not been done. However, we do not want to remand the case back any further, as the case has already been remanded thrice earlier, either by this Court or by the High Court. No further remand is necessitated.

We have scanned the evidence ourselves, considering the various sale deeds which are on record. It appears that there were transactions by the partners of the same property they had sold at the rate of Rs.1600/-, Rs.1454/-, Rs.1000/- and Rs.1069/- per sq. yard. In view of the said transactions and other sale deeds the determination made by the Tribunal at Rs.580/- per square yard was on the lower side. It would be appropriate in the facts and circumstances of the case to grant compensation at the rate of Rs.1000/- per sq. yard, instead of Rs.1336/-, as has been ordered by the High Court on wholly an impermissible ground.

Coming to the second limb of submission raised by the

learned counsel for the appellant, as the award had been passed by the land acquisition officer in the year 1976 before the amendment was made under the provisions of Land Acquisition Act. The amended section 23 was not applicable for the determination of the compensation made in the case. A Constitution Bench of this Court in *K.S. Paripoornan's* (supra) held that in the cases of land acquisition where awards have been passed prior to the date of commencement of the amendment the provisions for payment of an enhanced amount under Section 23(1) of the Act as amended, would not be applicable. Thus, we are of the opinion that the award of the compensation would be as per the provisions of the Act which prevailed in the year 1976, i.e. when the award had been passed by the Land acquisition officer.

Coming to the third submission raised by the learned counsel with respect to the ownership of Phar land. We find that the Trust was unable to file any document with respect to its ownership. It did not adduce evidence that at any point of time the street had been owned by it, and that how any right, title or interest vested in it, and also as to how it became a public street. No evidence has been adduced that road was metalled by the Trust. In the absence thereof, the finding that has been recorded with respect to the ownership is purely a finding of fact, and not amenable for interference.

Coming to the submission with respect to the allotment of the plots in addition to compensation. A perusal of the award passed in 1976 clearly indicates that plots had been given to an incumbent who was not claiming the compensation. In lieu of the compensation, the plots have been allotted. The High court in impugned judgment found that the plot was to be allotted in lieu of compensation. It was not the case set up by the owners that in lieu of the acquired land, they wanted plots; their claim was in addition to Compensation. No such policy has been shown to us that compensation, as well as plots, could be claimed at the same time. On our specific query, learned counsel is unable to point out any provision showing that it was within the scheme to claim compensation as well as the allotment of plot. Be that as it may. In the circumstances, it was clearly beyond the purview of the reference court, as it was to confine to the matter of determination of compensation as envisaged under Section 18 and other provisions relating to compensation. As such, we find that claim with respect to the allotment of a plot was not *germane*.

Resultantly, the compensation determined would carry the statutory benefits as available under the provisions of the Act in the year 1976. Amount due, if any, be paid positively within a period of three months from today, after making an adjustment of the amount paid so far.

Appeals are accordingly disposed of. No costs.

.....J.
(ARUN MISHRA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;
SEPTEMBER 13, 2017

ITEM NO.1

COURT NO.10

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 34957/2010

(Arising out of impugned final judgment and order dated 14-06-2010 in CWP No. 3382/2005 passed by the High Court Of Punjab & Haryana At Chandigarh)

KARNAL IMPROVEMENT TRUST.KARNAL

Petitioner(s)

VERSUS

SURINDER KUMAR ORS

Respondent(s)

WITH

SLP (C) No. 6045/2011 (IV-B)
 SLP (C) No. 25528/2011 (IV-B)
 SLP (C) No. 35079/2010 (IV-B)
 SLP (C) No. 35109/2010 (IV-B)
 SLP (C) No. 35336/2010 (IV-B)
 SLP (C) No. 35291/2010 (IV-B)
 SLP (C) No. 35135/2010 (IV-B)
 SLP (C) No. 1741/2011 (IV-B)
 SLP (C) No. 1803/2011 (IV-B)
 SLP (C) No. 1806/2011 (IV-B)
 SLP (C) No. 1821/2011 (IV-B)
 SLP (C) No. 1819/2011 (IV-B)
 SLP (C) No. 1823/2011 (IV-B)
 SLP (C) No. 1818/2011 (IV-B)
 SLP (C) No. 1739/2011 (IV-B)
 SLP (C) No. 1742/2011 (IV-B)
 SLP (C) No. 1822/2011 (IV-B)
 SLP (C) No. 1736/2011 (IV-B)
 SLP (C) No. 1748/2011 (IV-B)
 SLP (C) No. 1744/2011 (IV-B)
 SLP (C) No. 1805/2011 (IV-B)
 SLP (C) No. 1810/2011 (IV-B)
 SLP (C) No. 1811/2011 (IV-B)
 SLP (C) No. 1820/2011 (IV-B)
 SLP (C) No. 1747/2011 (IV-B)
 SLP (C) No. 1804/2011 (IV-B)
 SLP (C) No. 1807/2011 (IV-B)

Date : 13-09-2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For the parties:

Mr. Narender Hooda, Sr. Adv.
Mr. Kumar Kartikay, Adv.
Mr. Aviral Dhirendra, Adv.
Ms. Neelu Sharma, Adv.
Mr. Vishal Meghwal, Adv.
Mr. Himanshu Singh Dhillon, Adv.
Mr. Purvish Jitendra Malkan, AOR

Mr. Abhay Kumar, AOR
Mr. Vineet Kumar Singh, Adv.
Mr. Saurabh Mishra, Adv.
Mr. Himanshu, Adv.

Mr. Ajay Choudhary, AOR

Mr. Punit Dutt Tyagi, AOR

UPON hearing the counsel the Court made the following
O R D E R

IN SLP(C) No. 25528/2011

Detag and list tomorrow i.e. on 14.09.2017.

In all other matters

Leave granted.

The appeals disposed of in terms of the signed order.

Pending application, if any shall stand disposed of.

(NEELAM GULATI)
COURT MASTER (SH)

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER

(SIGNED ORDER IS PLACED ON THE FILE)