

**2023 STPL(WEB) 6 HP  
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, JUDGE AND HON'BLE MR. JUSTICE SATYEN  
VAIDYA, JJ.)

**MAST RAM AND OTHERS**

Petitioners

*VERSUS*

**STATE OF H.P. AND OTHERS**

Respondents

CWP No. 5219 of 2022-Decided on 06-07-2023

**Land Acquisition**

**Land Acquisition Act, 1894 – Section 4, 11A - The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Section 24(1), 24(2) – Land Acquisition – Applicability of Act – Supplementary Award – Houses and trees on acquired land – Land acquired in 2005 – Main award passed in 2008 - Supplementary award in 2022 – Plea that award should be under new Act – Hindrances caused by petitioner in evolution of houses and trees on acquired land – Held: Section 24 of the 2013 Act, prescribes the applicability of provisions of the 2013 Act where no award under Section 11 of the 1894 Act has been made. In the instant case, the petitioners cannot take the benefit of such provision as there was a validly made award by the Collector under Section 11 of the Act on 10.01.2008. The petitioners, evidently, did not take any effective steps for claiming compensation for the acquired houses/structures and trees. No relief granted – Petition dismissed**

(Para 7, 24, 26)

Advocate(s): For the petitioners : Mr. Virender Thakur, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General, with Mr. Ramakant Sharma, Ms. Sharmila Patial, Additional Advocate Generals and Ms. Priyanka Chauhan, Deputy Advocate General. Mr. Sunil Mohan Goel, Advocate, for respondent No.4.

**JUDGMENT**

**Satyen Vaidya, Judge**-The instant petition has been filed by the petitioners for the grant of following substantive reliefs:

“(i) That the impugned notification dated 02.05.2022, i.e. Annexure P-2, passed by respondent No.3 may very kindly be quashed and set-aside.

(ii) That the respondents may very kindly be directed to issue fresh notification to acquire the structures/houses of the petitioners as well as the trees standing on their land and pass a fresh award under the new Act i.e. the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.”

2. Brief facts necessary for adjudication of the case are that a large chunk of land was acquired by respondent No.1 through respondent No.3 (for short, ‘the Collector’) for establishment of cement manufacturing plant and mining area for M/s Jaiprakash Associates Limited (for short, ‘JAL’) in Villages Baga, Bhalag, Sehnali and Samtyari of Mangal Panchayat in Tehsil Arki, District Solan, H.P. under the

Land Acquisition Act, 1894 (for short, '1894 Act'). The notification under Section 4 of the 1894 Act was published in official gazette on 16.8.2005. The Collector offered the market price of acquired land vide award dated 10.01.2008.

3. Though the award was passed by the Collector on 10.01.2008, however, on account of non-evaluation of certain structures and trees, the compensation for such structures and trees was not ascertained. Petitioners claimed themselves to be the owners of some of such structures and trees.

4. In 2017, the cement plant alongwith entire mining area acquired for 'JAL' was taken over by the 4th respondent (for short, 'the Ultratech'). The Ultratech approached this Court by way of CWP No. 3073 of 2021 with the allegations that the local residents of the area had been causing hindrance in evaluation of houses/structures as well as standing trees on the acquired land. On 15.09.2021, the following order came to be passed by this Court:

"List on 21.01.2022. In the meanwhile, State Government shall evaluate houses and structures of the respondents for which no obstruction or hindrances whatsoever shall be caused by the respondents as per the assurance given in the open Court today".

5. The petition was finally disposed of by this Court on 24.11.2021 as under:

"The instant petition has been filed for grant of following substantive relief:

(a) That this Hon'ble Court may be pleased to issue writ of mandamus directing respondents No.1 to 3 to immediately to take all effective steps to get the houses, structures and trees evaluated which stand acquired by the petitioner company in terms of Award No.1/2008 dated 10.1.2008 which otherwise were not allowed to be evaluated, from the appropriate authorities/ departments so that the amount of compensation assessed is deposited and the vacant and peaceful physical possession of the area could be handed over to the petitioner company in terms of the provisions of the Land Acquisition Act, 1894 by the respondent- State."

2. This Court vide order dated 15.9.2021 directed the State Government to evaluate the houses and structures etc. of the respondents for which no obstruction or hindrance whatsoever shall be caused by the respondents as per the assurance given in the open Court on the said date. It is not in dispute that the houses and structures as well as the standing trees have now been evaluated.

3. In the facts and circumstances of the case, the instant petition has been rendered infructuous. However, in order to ensure that there is no further multiplicity of litigation, we direct the Land Acquisition Collector to immediately take consequential action in accordance with law. The petition is disposed of accordingly.

Pending application(s), if any, also stands disposed of."

6. Thus, the evaluation of houses, structures and standing trees was conducted and the Collector passed the impugned supplementary award, Annexure P-2, on 02.05.2022.

7. The grievance of the petitioners against the supplementary award dated 02.05.2022 is to the effect that the Collector has erred in passing the award under the provisions of the 1894 Act, whereas, it should have been in terms of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the 2013 Act'). It is contended on behalf of the petitioners that since the supplementary award has been passed much after the lapse of statutory period of two years

prescribed under Section 11A of the 1894 Act, it has no value, as the acquisition proceedings were deemed to have lapsed under the 1894 Act and the award was now required to be passed under the 2013 Act. As per the petitioners, there had to be a fresh proceeding under the 2013 Act. Reference has been made to Section 24 (1) (a) and section 24(2) of the 2013 Act to claim that the proceedings under the 1894 Act had come to an end. It is further submitted that this Court had issued directions to the Collector to take consequential action in accordance with law, but the Collector has failed to comply with such direction as the award passed by him under old Act cannot be said to be an action in accordance with law. The petitioners have also submitted that they have a right to file reference petition under the 2013 Act.

8. Respondents No. 1 to 3 have filed reply stating inter-alia that the petitioners themselves had not allowed the authorities to evaluate their houses/structures and trees. The then Land Acquisition Collector, Arki while making the award dated 10.01.2008 under Section 11 of the 1894 Act had made specific observation that the land owners/interested persons, who had not allowed the evaluation/assessment process of their houses/structures etc. to be completed, would be having remedy to file reference petition under Section 18 of the 1894 Act for claiming compensation for the left-out houses/structures in accordance with law.

9. Respondent No.4 in its reply has also reiterated that the petitioners themselves had not allowed the evaluation of their houses/structures and trees etc. forcing respondent No.4 to file CWP No.3073 of 2021. The petitioners were parties to CWP No. 3073 of 2021 and the order vide which the petition was disposed of was passed in their presence. Petitioners in their wisdom had chosen not to assail the order passed by this Court and rather had complied with such order by allowing the authorities to assess the evaluation of left out houses/structures and trees etc.

10. As per respondent No.4, petitioners and certain other similarly situated persons were adamant and had never co-operated either with the beneficiary of the acquisition or the functionaries of the State Government. Reference has been made to the award passed by the Collector on 10.01.2008, wherein the instances of noncooperation of petitioners and similarly situated persons had been detailed. It is further submitted that the petitioners had already availed the remedy of filing the reference petition for enhancement of the award before the reference Court and on such account also, petitioners were not entitled to seek the relief as sought by them from this Court under Article 226 of the Constitution of India.

11. We have heard learned counsel for the parties and have also gone through the records of the case carefully.

12. The entire thrust of petitioners herein is that after lapse of proceedings under 1894 Act, the only remedy left with Collector was to initiate proceedings under 2013 Act and to award compensation to the petitioners in terms of Act *ibid*.

13. In order to test the contentions so raised on behalf of petitioners, it will be relevant to notice the relevant provisions of Section 11 A of the 1894 Act and Section 24 of the 2013 Act, which read as under:

“11A. Period within which an award shall be made. –

(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation. – In computing the period of two years referred to in this section, the period during which any action or proceedings to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.”

“24. Land Acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases. –

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act: Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

14. Section 11A of the 1894 Act mandated the Collector to make an award under Section 11 within a period of two years from the date of the publication of the declaration, failing which, the entire proceedings or acquisition would lapse. Thus, the period of two years as contemplated under Section 11A was to commence from the date of declaration, under Section 6 of the 1894 Act, regarding requirement of land for public purpose. In the case in hand, the declaration under Section 6 of the 1894 Act was made vide notification dated 17.5.2006 and was published in the ‘Rajpatra’ on 22.5.2006. Hence, the award passed by the Collector under Section 11 on 10.01.2008 was within the period of two years prescribed under Section 11A of the Act.

15. Indisputably, the Award passed by the collector on 10.1.2008 did not include certain structures/houses and standing trees for the reason that such assets had remained without valuation. In this view of the matter the question arises as to authenticity and legality that can be attached to the Award that was in respect of only a part of the entire land sought to be acquired. At this stage it will also be relevant to notice Section 3(a) of the 1894 Act which reads as under:

“3(a). the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.”

16. Therefore, land will include all the benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth. In the case in hand, the houses/structures and trees which could not be evaluated, nonetheless, remained the part of acquisition.

17. Now, the fact situation herein suggests that the Collector had passed an Award within the time prescribed under section 11A of 1894 Act for part of the acquired land and some part of it was left out. The 2013 Act came into force w.e.f. 1.1.2014. The Award passed by the Collector on 10.1.2008, admittedly, was not within the five years' limit prescribed under section 24(2) of the 2013 Act so as to preserve its subsistence.

18. In such situation, should there be proceedings and disbursement of compensation for left out houses/structures and trees etc. under 2013 Act, is the question before us.

19. We propose to answer the question after taking notice of the relevant judicial precedents.

20. In Mohanji and another vs. State of U.P. and others JT 1995 (8) SC 599, the Hon'ble Supreme Court has held as under:

“3. The submission of learned counsel for the appellants is that the award dated 23.9.1986 in the present case is only in respect of the vacant land in its entirety, i.e. 0.99 acres but not for the building constructed over a portion thereof and, therefore, there was no award made within the specified period as required by Section 11A of the Act since a piecemeal award is not contemplated thereunder. Learned counsel submits that award of compensation for the building was contemplated at some subsequent date which is impermissible in law. Learned counsel for the appellants referred to certain observations to this effect in the award dated 23.9.1986 to support this submission.

4. A perusal of the award dated 23.9.1986 leaves no doubt that the compensation awarded therein is for the entire land measuring 0.99 acres bearing Plot No. 1311 belonging to the appellants which was acquired in the proceeding. It also appears from the award that the valuation report which had been sought from the Public Works Department had not been received and, therefore, the Land Acquisition Officer contemplated determination of compensation for the building in addition to the compensation awarded for the entire land being made on a subsequent date after the expiry of the specified period of two years under Section 11 of the Act. The question is whether in these circumstances it can be said that no award had been made under Section 11 of the Act in the proceeding to result in lapse of the entire proceeding for the acquisition of the land?

5. It is no doubt true that the entire award which is contemplated under Section 11 of the Act by virtue of the prescription in Section 11A has to be made within the period of two years failing which the entire proceeding shall lapse. The question is whether it can be said in the present case that no award has been made under Section 11 of the Act in this proceeding? In our view it cannot be said that no award under Section 11 has been made for the land acquired. Admittedly, compensation has been determined in the award so made for the entire area of 0.99 acres. In view of the fact that no piecemeal award by making a subsequent award after the expiry of the period of two years is contemplated in law, the award dated 23.9.1986 must be construed as the whole award made under Section 11 awarding compensation for the entire area of 0.99 acres with no compensation awarded for the building. The appellants, therefore, had the right to claim compensation for the building by seeking a reference under Section 18 of the Act treating the award as one in which compensation had been determined and awarded only for the entire land measuring 0.99 acres but no compensation was awarded for the building therein. The appellants had the remedy to claim compensation for the building in accordance with law treating the award made as not awarding any compensation for the building. That is, however, a different matter and it does not require any further consideration in this context. It is sufficient to say that the award dated 23.9.1986 made within the period specified in Section 11A of the Act must be construed as

an award under Section 11 in the proceedings for acquisition of the appellants' land bearing Plot No. 1311 having a total area of 0.99 acres. The contention that the entire proceeding for acquisition of the land has lapsed by virtue of Section 11A cannot, therefore, be accepted."

21. In *State of Punjab and others vs. Sharanpal Singh and others* (1996) 11 SCC 683, the Hon'ble Supreme Court while following *Mohanji* (supra) held as under:

"5. An identical issue came up before this Court in *Mohanji* (supra) wherein it was held on 4.8.1995 as follows :

"A perusal of the award dated 23.9.1986 leaves no doubt that the compensation awarded therein is for the entire land measuring 0.99 acres bearing Plot No.1311 belonging to the appellants which was acquired in the proceedings. It also appears from the award that the valuation report which had been sought from the Public Works Department had not been received and, therefore, the Land Acquisition Officer contemplated determination of compensation for the building in addition to the compensation awarded for the entire land being made on a subsequent date after the expiry of the specified period of two years under Section 11 of the Act. The question is whether in these circumstances it can be said that no award had been made under Section 11 of the Act in the proceeding for the acquisition of the land? It is no doubt true that the entire award which is contemplated under Section 11 of the Act by virtue of the prescription in Section 11A has to be made within the period of two years failing which the entire proceeding shall lapse. The question is whether it can be said in the present case that no award has been made under Section 11 of the Act in this proceedings?"

In our view it cannot be said that no award under Section 11 has been made for the land acquired. Admittedly, compensation has been determined in the award so made for the entire area of 0.99 acres. In view of the fact that no piecemeal award by making a subsequent award after the expiry of the period of two years is contemplated in law, the award dated 23.9.1986 must be construed as the whole award made under Section 11 awarding compensation for the entire area of 0.99 acres with no compensation was awarded for the building. The appellants, had the right to claim compensation for the building by seeking a reference under Section 18 of the Act treating the award as one in which compensation had been determined and awarded only for the entire land measuring 0.99 acres but no compensation was awarded for the building therein. The appellants had the remedy to claim compensation for the building in accordance with law treating the award made as not awarding any compensation for the building. That is, however, a different matter and it does not require any further consideration in this context. It is sufficient to say that the award dated 23.9.1986 made within the period specified in Section 11A of the Act must be construed as an award under Section 11 in the proceedings for acquisition of the appellants' land bearing Plot No. 1311 having a total area of 0.99 acres. The contention that the entire proceedings for acquisition of the land has lapsed by virtue of Section 11A cannot, therefore, be accepted."

6. The ratio as extracted above squarely applies to the facts of this case. Accordingly, we hold that the impugned award dated 25th March, 1985 within the period specified in Section 11A of the Act must be construed as an award under Section 11 in the proceedings for the acquisition of the lands in question and the contentions to the contrary cannot be sustained. However, we leave open the rights of the respondents to claim compensation for the buildings/trees in accordance with law treating the award already made as one not awarding any compensation for the buildings/trees."

22. In *Purshottam Behl vs. Union of India and others* 275 (2020) Delhi Law Times 16, (DB), a Division Bench of Hon'ble Delhi High Court made following pertinent observations in para 54 as under:

“54. Thus the law with respect to the provisions of the Land Acquisition Act is, that only one award is envisaged and even if is not with respect to one of the factors to be taken into consideration, the award made is to be deemed to be denying any compensation therefor and the only remedy is of seeking reference under Section 18. One award only has been advocated, only to avoid inconsistencies in determination of valuation of different parcels of land vide the same notification. For this reason it has been held that even where there are more than one award, inconsistencies should be avoided. There is no absolute bar to more than one award.”

23. Thus, the proposition of law is well settled that there can be only one award under Section 11 of the 1894 Act and in case where such award was validly passed, there was no scope for passing of a supplementary or any subsequent award. The only remedy, with the person dissatisfied, was to make a reference under Section 18 of the 1894 Act. In the facts of the case in hand, the Award was passed by the Collector within 2 years from issuance of declaration under Section 6 of the Act for the entire land except certain structures and trees, therefore, in view of what has been held in *Mohanji* (supra) the Award dated 10.1.2008 was a legally and validly passed award under Section 11 of 1894 Act.

24. The contention of the petitioners that under Section 24 of the 2013 Act, they were entitled to compensation under the new Act also deserves to be rejected. Sub clause (a) of sub section (1) of Section 24 of the 2013 Act, prescribes the applicability of provisions of the 2013 Act where no award under Section 11 of the 1894 Act has been made. In the instant case, the petitioners cannot take the benefit of such provision as there was a validly made award by the Collector under Section 11 of the Act on 10.01.2008.

25. Even sub section (2) of Section 24 of the 2013 Act will not come to the rescue of the petitioners, according to which, the land acquisition proceedings under the 1894 Act are deemed to have lapsed in case an award under Section 11 of the 1894 Act had been made five years or more prior to commencement of the 2013 Act, but the physical possession of the land has not been taken or the compensation has not been paid. None of the conditions prescribed by sub section (2) of Section 24 of the 2013 Act are applicable to the facts in hand. As noticed above, the petitioners themselves have admitted in the petition that the possession of acquired land had been taken over initially by the 'JAL' and in 2017 by the 'Ultratech'. The petitioners are also not in denial of the fact that they had not received the compensation for the land. In such view of the matter, the claim of petitioners regarding applicability of benefits of the 2013 Act to them, is also unfounded.

26. Even otherwise, the petitioners, evidently, did not take any effective steps for claiming compensation for the acquired houses/structures and trees. But for their bald averments to the effect that the petitioners had been agitating the matter before the authorities, no tangible material has been placed on record to substantiate such assertion. It was the Ultratech, which ultimately approached this Court by way of CWP No. 3073 of 2021 with the averments that petitioners were not allowing the evaluation of the immoveable assets like houses/ structures and trees. The order in CWP No. 3073 of 2021 was passed by this Court in presence of the petitioners. Further, the award dated 10.01.2008 passed by the Collector specifically recorded the observations to the following effect:

“5. Enquiry U/S 8 of the Act. After the publication of Notification under Sections 6 & 7 of the Land Acquisition Act, 1894, proceedings under Section 8 were started and measurement and valuation of houses & structures and counting of forest trees and fruit plants was taken up through the Department of Public Works, Forests, Agriculture and Horticulture etc. From the beginning

some landowners, especially of village Bhalag, denied to get their houses, structures and trees measured or counted despite repeated efforts. Orders were issued on 15.5.2006 vide No.SDK/1552-57 for this purpose to the departments. Another order was issued on 13.6.2006. On not receiving the required report another order was issued to the Executive Engineer-B&R, DFO Kunihar, Dy. Director Agriculture, Solan, Dy. Director (Hort), Solan, Tehsildar Arki and Naib Tehsildar (Settlement), Navgaon to expedite the matter on 26.7.2006. Again on 26.7.2006, another letter was issued to the concerned officers and on 2.12.2006. Further detailed instructions were issued to the Executive Engineer, B&R, DFO Kunihar, Dy. Director Agriculture, Solan, Dy. Director (Hort), Solan on 24.9.2007, whereby it was intimated that if the reports were not received from them, they shall be held responsible personally. On 18.10.2007, the Executive Engineer, PWD, Arki intimated that some of the landowners are not allowing the field staff to enter into their area for the measurement of structures etc. and that the attitude of the landowners was very adamant. However, the reports regarding the measurement of houses and counting of trees etc. which was allowed by the landowners and other interested persons, have been received and the valuation so done has been included in the Award. With an intention to include all the valuation in the award, notices were again issued on 5.11.2007 to such landowners, who did not cooperate in the valuation work, with the request that they may make it convenient to remain present on 17.11.2007 in their respective land, so that the departmental officials may complete the job. The notice was widely publicized and was also published in the newspapers "Amar Ujala" on 8.11.2007 and "Divya Himachal" on 9.11.2007. The notice has also been mentioned in the Rapat Rozamcha on Rapat No. 89 dated 13.11.2007 by the Halqua Patwari, confirming its wide publicity. When the teams reached the spot, some villagers, who were present gave statements to the effect that the people had gone outside the village on account of two marriages. Although the attitude of some of the adamant villagers/interested persons was very negative, still it was decided to give them last opportunity and accordingly a notice was issued to all concerned on 20.11.2007 by wide publicity by the revenue field staff instructing the landowners and other interested persons to remain present on the spot on 26.11.2007. The publicity was done in the area and the fact has been recorded by the Halqua Patwari vide Rapat Roznamcha 105 dated 23.11.2007. Despite all the efforts narrated above, the remaining valuation work had to be left out in order to complete the process of acquisition within a period of two years from the date of issuance of Notification under Sections 6 and 7 of the Land Acquisition Act, 1894 i.e. 17.5.2006. However, the landowners/interested persons, who have not allowed the measurement and counting work shall have the remedy for filing reference under the relevant Sections of the Land Acquisition Act, 1894."

27. The petitioners for obvious reasons did not assail such observations/findings by the Collector. In this background, the only inference that can be drawn is that since the petitioners themselves had been instrumental in not allowing the evaluation of the houses/structures and trees and hence, cannot have any bonafide claim for compensation under the 2013 Act.

28. It is also revealed from the record that petitioners No. 1 and 2 had preferred reference petitions against award dated 10.01.2008 and one of the grounds identically taken in both the petitions was as under:

"15. That no measurements of the house, cow sheds, structures etc. of the petitioner was done by respondent No.1 and the petitioner understand that no compensation for the same was awarded by respondent No.1 on this account."

In addition, petitioners No. 4, 11, 13 and 15 had preferred application under Section 28A of the 1894 Act. The disclosure of such facts has come by way of documents annexed by the Ultratech with its reply. Petitioners did not disclose such facts. That being so, such of the petitioners, who had earlier sought the remedies under the 1894 Act against the award dated 10.01.2008 are

otherwise not entitled to invoke the jurisdiction of this Court by way of filing of the instant petition. Regarding the remaining petitioners, it is held that they had the remedy under Section 18 of the 1894 Act.

29. Thus, there is no hesitation to say that the award passed by the Collector on 02.05.2022 is an innocuous exercise, which otherwise will have no legal consequence save and except amounting to an acknowledgement on behalf of the Ultratech to pay the amount of compensation to the petitioners for their houses/ structures and trees which had remained without evaluation. The scope of order dated 24.11.2021 in CWP No. 3073 of 2021 cannot be construed to have a wider amplitude than the legal position, as held above.

30. In light of above discussion, petitioners are not entitled to the reliefs as prayed in the petition and their petition is accordingly dismissed leaving the petitioners to avail such available remedy, if any, still available to them under 1894 Act. Pending application(s), if any, also stand disposed of.

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