

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

Letters Patent Appeal No.35 of 2012 (O&M)

Date of Decision: May 20, 2015

The Punjab Border Kissan Welfare Society

.....Appellant

versus

Union of India and others

.....Respondents

**CORAM:** HON'BLE MR.JUSTICE SURYA KANT.  
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.J.S.Verka, Advocate, for the appellant.

Mr.Chetan Mittal, Assistant Solicitor General of India  
with Mr.Brijeshwar Singh Kanwar, Senior Standing  
counsel for Union of India-respondent Nos.1 to 3.  
Mr.Aman Bahri, Additional AG, Punjab.

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1. Whether Reporters of Local papers may be allowed to see the judgment?yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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Surya Kant, J. (Oral)

The instant letters patent appeal raises questions of paramount importance in relation to the rights of owners-cum-farmers of State of Punjab at Indo-Pak international border area, comprising the revenue districts of Fazilka, Ferozepur, Tarn-Taran, Amritsar, Gurdaspur etc. in the State of Punjab.

[2] A strip of land measuring 44 feet wide was allegedly acquired by the State of Punjab for Union of India for the fencing of Indo-Pak border, in the years 1988-1991. The agricultural land located between the 'fencing' and the actual international border continuous to be owned by farmers living

in the villages close to the said border. These Indian farmers are allowed restricted farming on that agricultural land. There is another 11 feet wide strip of land abutting the 'international border' which is used by Defence Forces for patrolling. This land is still owned by the villagers-cum-farmers. Similarly, there is yet another strip of land parallel to the 'fencing' towards Indian side of the fencing which is also used by Defence Forces as a vehicle track though it is a part of the 44 feet wide strip of land which is said to have been acquired in the years 1988-1991 for the purpose of fencing.

[3] The acquisition, requisition, utilization, possession and restricted farming of the aforesaid land has given rise to several issues.

[4] The grievance of the farming-community is that they were paid no compensation towards the alleged acquisition of the 44 feet wide strip; the compensation of Rs.10,000/- per acre payable on annual basis for restricted farming is also not disbursed to them and that 11 feet wide strip of land which is owned by them, is also being used for defence purposes without any acquisition or payment of compensation to them. Their another serious grievance is against the denial of permission to use the canal water for irrigation of the land which is still in their possession and where 'restricted farming' is allowed.

[5] On the other hand, the case of Union of India is that the 44 feet strip of land was acquired in accordance with law and compensation of Rs.7.0 crores or so, was released to the State of Punjab for its disbursement to the expropriated land-owners.

[6] It is also the case of Union of India that the due

amount of compensation for the annual loss being suffered by farmers on account of 'restricted farming' has been regularly released to the State of Punjab for disbursement to the farmers and as late as on 13.08.2014 also, a sum of Rs.16,25,00,000/- was released for that purpose.

[7] Similarly, it is maintained by learned State counsel that the amount of Rs.7.0 crores or so was indeed paid to the affected land-owners. It is claimed that the 44 feet wide strip of land was acquired in accordance with law and/or through private negotiations.

[8] The petitioner-society, as a representative of the farmers, is seriously disputing the receipt of any such compensation by the affected farmers.

[9] It is pertinent to mention here that though the farmers are admittedly allowed only restricted agricultural activities on the land near the international border and they are permitted to enter such land only for fixed hours, yet there was no Scheme or Policy to compensate them for the losses suffered for non-utilization of their land to its optimum capacity.

[10] Having regard to the recurring loss being suffered by the farmers during every crop season that this Court vide order dated 10.01.2014 directed the authorities to pay an interim compensation of Rs.6500/- per acre from January, 2014, to be shared equally by the Government of India and the State government. This interim compensation was only for the loss caused to the farmers due to restricted farming. The relevant part of the order dated 10.01.2014 reads as follows:-

“..... As an interim measure, the State government may pay compensation of

Rs.6,500/- per acre from January, 2014, out of which fifty percent may be claimed from the Government of India, which will compensate the State Government.....”

[11] Thereafter, the amount of interim compensation was increased to Rs.10,000/- per acre on acceptance of the report dated 28.02.2014 of the Committee constituted by this Court. The order dated 10.02.2015 enhancing the interim compensation (relevant extracts) reads as follows:-

“.....The Government of Punjab states that the compensation on account of loss caused due to the nature of the crops insisted upon by the authorities will be paid @ Rs.10,000/- per acre per year to the party entitled to the same. Learned counsel appearing on behalf of the appellant states that the same would be payable to the owners. It is for the Government of Punjab and its officers to decide as to who is entitled to the same.....”

[12] It may be mentioned here that the Union of India challenged the interim orders dated 10.01.2014 and 14.03.2014 passed by this Court, before the Hon'ble Supreme Court but their Lordships vide order dated 10.10.2014 declined to interfere with those orders observing that the High Court would decide the instant appeal in a time bound manner.

[13] Thereafter, vide the following comprehensive order dated 18.03.2015 this Court formulated the issues which arise for consideration in this appeal:-

“.... In continuation of several interlocutory orders/directions issued by this Court from

time to time, we have heard learned counsel for the parties. The following questions do arise for consideration in this matter:-

- (i) Whether the farmers have been adequately compensated at the rates (revised or to be revised) for the loss suffered by them due to restricted farming on the land which falls within the Fencing and the international border?
- (ii) Whether the farmers are entitled to the said compensation from the year 1990 (as claimed by them) or the year 1998 (as claimed by the respondents) ?
- (iii) Whether the compensation amount so far assessed by the respondents has been disbursed to the farmers fully/partially?
- (iv) Whether the farmers have been paid compensation for their acquired land in accordance with the Land Acquisition Law (s), namely, the land utilized for border fencing?
- (v) Whether Union of India and other authorities are liable to pay compensation to the farmers for their land measuring a strip of 11 Ft. Wide, abutting the international border which is being used for patrolling on international border?
- (vi) Whether the farmers are entitled to facilities like canal waters access to the private land between the fencing and the International Boarder as well as other measures of rehabilitation as envisaged in the policy decision taken by the Chief Secretary, Punjab in the year 1990?

As regard to questions No.(v) and (vi), it was stated on February 10, 2015, that the Punjab Government has decided to acquire 11 Ft. wide strip land in accordance with the provisions of the New Land Acquisition Act for which notification under Section 11 of the Act

will be issued by 31<sup>st</sup> August, 2015. Learned Additional Advocate General, on instructions, states that the exercise to identify the land and its owners has since been initiated and formal notification shall be issued before 31<sup>st</sup> August, 2015, in terms of the statement already made before this Court.

Let a formal affidavit of undertaking on behalf for acquisition of the aforesaid land, be filed by the Financial Commissioner (Revenue), Punjab on or before the next date of hearing.

As regard to the other contentious issues like fairness of the compensation determined by the authorities, whether such compensation amount has been actually disbursed or not, the identity of the farmers to whom the compensation is payable, etc. etc., it appears expedient to set up a Tribunal to be presided over by a judicial officer in the rank of District Judge/ Additional District Judge who can also be vested powers to entertain reference akin to Section 18 of the 1894 Act for determination and/or award of the fair and just compensation amount.

Let Union of India and State of Punjab thus have instructions for setting up of the Tribunal for the purpose of expeditious disposal of the claims which is essential in the interest of farmers' community. Such Tribunal can be established district-wise for all the

border districts or it can hold circuit benches to ensure consistency and uniformity in decision making process.

Though we are inclined to dispose of this appeal finally in deference to the order dated 10.10.2014 passed by the Hon'ble Supreme Court but having regard to the fact that the State of Punjab has now agreed to initiate the acquisition process for the private land which is being used for 'patrolling', we deem it necessary to keep this appeal pending till the Union of India/State of Punjab, constitute the Tribunal(s) and also the State of Punjab issue a formal notification of acquisition in a time bound manner.

It is also imperative upon the Union of India and State of Punjab to clarify their stand regarding the acquisition of the land where 'actual fencing' has been made. The Union of India shall have to clarify as to how much land underneath fencing was acquired with consent and how much by following the procedure under the Land Acquisition Act.

In the meanwhile, the State of Punjab shall disburse the compensation amount for the land falling between 11 Ft. strip and the fencing, to the eligible farmers, if already not paid.....”

[14] In deference thereto, Union of India through Anil Paliwal, IPS, Inspector General, BSF, Punjab Frontier, Jalandhar

(Punjab), as well as the State of Punjab through R.K.Kaushik, Special Secretary, Department of Home Affairs & Justice, have filed their respective affidavits, which are taken on record. The relevant part of the affidavit filed on behalf of Union of India are extracted below:-

“..... As regard question No.(i), it is submitted that in respectful compliance of the Hon'ble High Court's directions, the Government of India has already released a sum of Rs.10,25,00,000/- vide letter L/No.12/45/2014-BADP dated 13.08.2014 to the Government of Punjab for disbursement to the affected farmers. Copy of the same is annexed herewith as Annexure A-1. The Government of Punjab can apprise the Hon'ble Court regarding the status of disbursement of compensation amount to the affected farmers.

That as regards question No.(ii), it is submitted that providing any compensation from retrospective effect may attract severe complications in verification of the status during the past period and may result in fraudulent claims. Further, it is submitted that this Hon'ble Court vide order dated 10.01.2014 have directed for setting up of an Expert Committee for determining appropriate compensation taking into account possible yield if there is restricted farming as against the non-restricted farming. The differential of the two would be the adequate compensation.

The Hon'ble Court nominated the Vice Chancellor of Punjab Agricultural University, Ludhiana, Special Secretary to State of Punjab and Secretary, Border Management, Ministry of Home Affairs to nominate one expert each to constitute such committee. On receipt of the report from the said Constituted Expert Committee, an amount of Rs.10,000/- per acre was submitted in the Hon'ble Court and the same was accepted. The answering respondents have been paying their share in accordance with the orders of this Hon'ble Court.

That as regard Question No.(iii), it is submitted that the Competent authority to disburse the compensation to the farmers is the State Government. The State Government only can apprise the Hon'ble Court regarding the status of disbursement of compensation.

That as regards Question No.(iv), it is submitted that on the request of the Government of Punjab dated 01.02.1991 (Annexure A-2), a lump-sum amount of Rs.7 crore was released by the Union of India to the State of Punjab in the year 1991 (Annexure A3) for disbursement as compensation to the eligible farmers whose land was acquired for erection of Border Security Fence. The State Government only can apprise the Hon'ble Court regarding the status of disbursement of

compensation.

That as regards Question No.(v), it is submitted that the State Government has already initiated the process of acquiring the land measuring 11 feet wide strip and in order dated 18.03.2015, the said aspect has been dealt with by this Hon'ble Court.

That as regards Question No.(vi), it is submitted that the issue as regards decision taken by the Chief Secretary, Punjab, would only be substantiated by the State Government. Further, it is submitted that the farmers have installed their own tube-wells and pump sets (Tube wells-1675 nos., Hand pumps -53 nos. and pump sets-135 nos.) alongwith the border inside the fencing area and outside the fencing area and they are not facing any difficult in running those tube-wells or water shortage. The answering deponents are not stopping the water flow from such tube-wells installed by the farmers. The details of tube-wells functioning in the border area have been mentioned in affidavit dated 11.11.2013 filed by Dr.Jagat Singh, Inspector General, HQ, Special, DG, Western Command.

That for setting up the Tribunal, it is respectfully submitted that the Hon'ble Court may pass appropriate order in view of the submissions made herein above para. Further it is to mention that on the orders of this

Hon'ble Court a committee was constituted and on the recommendations of the Committee, an amount of Rs.10,000/- per acre per annum was fixed after taking into consideration the agriculture price index and the position with regard to restricted farming and non restricted farming.

That the Union of India has sanctioned a lump-sum amount of Rs.7 crore in the year 1991 to the State Government for payment to the affected farmers whose land was acquired for erection of border fencing. As regards, the mode of acquisition of land and the amount of compensation paid to the farmers, the State Government can apprise the Hon'ble Court.

That the answering respondents are always with the problems being faced by the inhabitants of border areas and various welfare programmes are funded by the Government of India. Besides, securing the borders of the nation and protection of life and liberty of the residents of border area, Union of India is also running various welfare programmes and providing funds to the State Government under Border Areas Development Programmes for the border population.....”

[15] Similarly, the relevant extract of the affidavit of R.K.Kaushik, Special Secretary to Government of Punjab reads as follows:-

“.....That as per the above orders of Hon'ble

High Court, Government of Punjab has already issued notification vide letters Nos.12/11/2010-2HS/82, 87, 92, 97, 101 and 106 dated 11.03.2015 to appoint Additional Deputy Commissioner (General), Pathankot, Gurdaspur, Amritsar, Tarn Taran, Ferozepur, Fazilka as Land Acquisition Collectors of the concerned districts. The Deputy Commissioner, Amritsar has also been appointed coordinator to coordinate the exercise vide letter No.12/11/2010-2HS/114 dated 13.03.2015. The copies of letters are at Annexures R/1-7.

That the Government of Punjab has also issued letter No.12/11/2010-2HS/174 dated 12.05.2015 to the Secretary, Border Management, Ministry of Home Affairs, Government of India, New Delhi to take further action in the light of Section 10(a)(1) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (No.4 of 2015). Under this section appropriate Government, in the public interest, by notification, may exempt any of the projects from application of the provisions of Chapter II and III of this Act. One of the items covered under this section is projects relating to national security and patrolling on the Indo-Pak border concerns national security. This project can be exempted from

the provisions of Chapter II and III. As the Government of Punjab is acquiring land on behalf of Government of India for use of Border Security Force. In this case “appropriate government” is Government of India. The letter to the Government of India dated 12.05.2015 is Annexure R/8.....”

[16] As regard to the dispute over the 11 feet wide strip of land used by the Defence Forces for patrolling, it may be seen from its affidavit that the Union of India has consented to the acquisition of that land to be made by State of Punjab. Further, the State of Punjab has also rightly understood that consent as the requisite compliance of procedure under 'the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter referred to as '2013 Act'). The State of Punjab shall accordingly now proceed to issue notification so as to invite objections etc. from the affected farmers. The notification must be issued before 31.08.2015 and let the acquisition proceedings be finalized and award be passed by the Land Acquisition Collector, before 31.12.2015. The aggrieved farmers shall be at liberty to seek enhancement of compensation in accordance with the mechanism provided under the 2013 Act.

[17] On a conjoint reading of the orders passed by this Court from time to time and the affidavits filed by the respondents, it emerges that (i) an amount of Rs.10,000/- per acre per year is disbursed to compensate the farmers for the loss caused due to restricted farming; (ii) there is a dispute with regard to (a) identity of the farmers to whom such

compensation is payable and (b) actual disbursement of compensation to the eligible persons.

[18] Similarly, there is a serious dispute with regard to acquisition or payment of compensation for the 44 feet wide strip of land where actual fencing has since been set-up. While Union of India categorically states that the land was acquired in accordance with law, the farmers are seriously disputing the same. The appropriate recourse to resolve such a disputed question of fact finds in our previous order dated 18.03.2015, reproduced above, namely, setting up a Tribunal to be presided over by a District Judge or an Additional District Judge.

[19] Union of India also agrees for entrustment of such like disputes to the Tribunal and so is the stand taken by learned State counsel.

[20] For the reasons afore-stated, we allow this appeal; modify the order passed by learned Single Judge and dispose of the writ petition with a direction to constitute a One Member Tribunal comprising a member of the Punjab Superior Judicial Service posted in any of the border districts of Punjab State. The Tribunal shall hold circuit benches at different District headquarters of the border area for the purpose of determination of questions formulated in our order dated 18.03.2015 and shall also decide any other allied, relevant or related issue that may arise or raised by the parties.

[21] The State of Punjab shall within one month of the receipt of the certified copy of this order, send a request to Punjab and Haryana High Court through its Registrar General for nominating a Member of the Punjab Superior Judicial Service as the Presiding Judge of the Tribunal. We request the

High Court to accede to such request within one month on receipt of the request from the State Government. The Tribunal shall be formally notified by the State Government within one month thereafter. The Presiding Officer shall be provided a court room, the requisite staff and other facilities by the District Judges of the concerned Sessions Divisions and if need be, additional staff shall be engaged on adhoc or contract basis. The State Government shall allocate requisite funds for the said purpose, if so required. The Presiding Officer and the staff, if any required to accompany him, shall be paid T.A., D.A. as per Rules.

[22] We make it clear that if the Tribunal finds that the 44 feet wide strip of land was not acquired in the years 1988 to 1991 or thereafter, such land shall be deemed to have been acquired in accordance with the provisions of 2013 Act and the Tribunal shall then determine the compensation amount payable to the affected owners. However, if it is found that the land was indeed acquired statutorily or through negotiations, necessary finding to this effect may be returned.

[23] Any inter-se dispute between Union of India and the State of Punjab relating to the subject under consideration shall also be resolved by the Tribunal.

[24] The individual owners/farmers and/or the Society representing the farmers, shall be at liberty to put up their claim before the Tribunal for which State of Punjab shall issue Public Notices in two leading Newspapers (one English and other in vernacular language) within one month of the constitution of the Tribunal.

[25] It is made clear that the amount of compensation payable on the acquisition of 11 feet wide strip as well as 44

feet strip of land (if already not acquired) shall be payable by Union of India through the State of Punjab minus the amount already released and if it is found that the State of Punjab has mis-utilized the amount already released by Union of India, the later shall be at liberty to raise such claim against the State of Punjab, before the Tribunal.

[26]           The State of Punjab shall also be at liberty to raise all its issues or claims before the Tribunal including whether the amount of compensation payable towards annual loss due to 'restricted farming' is liable to be paid exclusively by Union of India or it is to be shared proportionally by the State of Punjab as well.

[27]           Ordered accordingly.

[28]           Dasti.

[SURYA KANT]  
JUDGE

*May 20, 2015*  
*mohinder*

[P.B.BAJANTHRI]  
JUDGE