**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RFA No.2764 of 2015 (O&M)
Date of decision: 8.7.2015

Bhoop Singh and others

..... Appellants

Versus

Kuria and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Abhishek Yadav and Mr. R. S. Manhas,
Advocates for the appellants.

RAJESH BINDAL, J

This order will dispose of two appeals bearing RFA Nos.2764 and 3055 of 2015, as common questions of law are involved therein.

The facts are noticed from RFA No.2764 of 2015.

This is an appeal filed against the award passed by the learned Additional District Judge, Rewari in a reference under Section 3H(4) of the National Highways Act, 1956 (for short "the Act"). The land of the appellants was acquired by the National Highways Authority of India vide notification dated 3.11.2009 for widening of National Highway No.8. The Land Acquisition Collector (for short "the Collector") announced the award on 2.7.2010. As there was certain dispute regarding apportionment of compensation amongst the claimants, the matter was referred by the competent authority for decision to the District Judge, Rewari. The same having been decided vide impugned award, it has been challenged in the present appeal. The opening sheet annexed with the appeal shows that the appeal has been filed under Section 96 CPC.

As the issue in the present appeal is regarding its maintainability, a request was made to Mr. Chetan Mittal, Assistant Solicitor General to assist the Court.

On the issue of maintainability of appeal against the award of the learned court below passed under Section 3-H(4) of the Act, learned counsel

MANOJ KUMAR
2015.07.14 09:13
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for the appellants submitted that as the judgment has been given by the Additional District Judge in a civil matter, the appeal shall lie to this Court under Section 96 CPC.

Mr. Chetan Mittal, Assistant Solicitor General, submitted that in the Act, no appeal has been provided against the award passed by the civil court under Section 3-H(4) of the Act. Code of Civil Procedure has limited application. The provisions of Land Acquisition Act, 1894 are also not applicable in terms of the provisions of Section 3-J of the Act. It was further submitted that the appeal to this Court under Section 96 CPC otherwise would lie only against a decree. In the present case, the learned court below has not passed any decree.

Considering the submissions made by learned Assistant Solicitor General, learned counsel for the appellants submitted that either the appeal be treated as a revision or he may be permitted to challenge the award by filing a writ petition.

Heard learned counsel for the appellants and Mr. Chetan Mittal, Assistant Solicitor General and perused the paper book.

As per the scheme of the Act, in terms of Section 3-A of the Act, Central Government may issue a notification declaring its intention to acquire any land for building, maintenance, management or operation of national highway or part thereof.

Section 3-B of the Act gives power to an authorised person to carry out survey of the land to be acquired.

Section 3-C of the Act enables any person interested in the land to file objections. The competent authority is required to afford opportunity of hearing to the objector and dispose of the same.

Where either no objections are filed under Section 3-C of the Act or, if filed, are rejected, the Central Government may issue notification for acquisition of the land. On publication thereof, the land shall vest in the Central Government. Such a declaration has to be within a period of one year from the date of publication of notification under Section 3-A of the Act. Sections 3-E and 3-F of the Act enable the Central Government to take possession of the land acquired after the compensation payable therefor has been determined by the competent authority under Section 3-G of the Act and has been deposited with the competent Authority in terms of Section 3-

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2015.07.14 09:13
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H(1) of the Act.

Section 3-G of the Act provides for assessment of compensation for the land acquired by the competent authority. Before proceeding to determine the amount, public notice has to be published in two newspapers including one in vernacular language inviting claims from all the persons interested in the land to be acquired. If the amount of compensation determined by the competent authority is not acceptable to either of the parties, they can raise objections. Thereafter, the amount of compensation is to be determined by an Arbitrator to be appointed by the Central Government. The provisions of the Arbitration and Conciliation Act, 1996 apply to the arbitration proceedings under the 1996 Act. The factors required to be considered by the competent authority or the Arbitrator while determining the amount of compensation have also been enumerated in the Act.

Section 3-H(1) of the Act provides that the amount of compensation as determined under Section 3-G of the Act shall be deposited by the Central Government with the competent authority before taking possession of the land. After the amount is deposited, the competent authority is required to pay the amount to the person(s) entitled thereto.

In case, more than one person claimed interest in the amount of compensation deposited, the competent authority is required to determine as to who is the rightful claimant.

Section 3-H(4) of the Act provides that if any dispute arises regarding apportionment of the compensation, competent authority shall refer the same for decision of the Principal Civil Court of original jurisdiction in whose jurisdiction the acquired land is situated. Sub-sections 5 and 6 of Section 3-H of the Act provide for payment of interest on the enhanced compensation, as may be determined by the Arbitrator and the procedure for deposit/payment thereof.

Section 3-I of the Act provides that the competent authority shall have certain powers of the civil court, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

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2015.07.14 09:13
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(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commission for examination of witnesses.

Section 3-J of the Act bars application of the provisions of the Land Acquisition Act, 1894 for acquisition of land under the Act.

The relevant provisions of the Act are extracted below:-

"**3H. Deposit and payment of amount**:-(1) The amount determined under Section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2)As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central government pay the amount to the person or persons entitled thereto.

(3)Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4)If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5)Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under section 3D till the date of actual deposit thereof.

(6)Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government

MANOJ KUMAR
2015.07.14 09:13
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in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.

3-I. Competent authority to have certain powers of civil court.-- The competent authority shall have, for the purpose of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commission for examination of witnesses.

3J. Land Acquisition Act 1 of 1894 not to apply.-- Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act."

In exercise of powers conferred under Section 9 of the Act, the Central Government has framed the National Highways Rules, 1957 and the National Highways (Manner of Depositing the Amount by the Central Government with the Competent Authority for Acquisition of Land) Rules, 1998.

There is no quarrel on the proposition of law that the appeal is a creation of statute. Unless right to appeal is specifically provided and the forum thereof, no one has right to file appeal. Reference can be made to judgment of Hon'ble the Supreme Court in Khanna Improvement Trust v. Land Acquisition Tribunal, 1995 (2) SCC 557 and Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and others, (2010) 13 SCC 216.

A perusal of the provisions of the Act does not in any way provide that an award passed by the reference court under Section 3-H(4) of the Act is subject to appeal before any court. In the absence thereof, it cannot be

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2015.07.14 09:13
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opined that such an award is appealable before any court much less, before this Court.

The claim of the appellants that the appeal is maintainable under Section 96 CPC is totally mis-conceived for the reason that the same provides for an appeal from a decree passed by the court. In the case in hand, it has no where been provided that the award passed by the reference court under Section 3-H(4) of the Act is a decree, as has been provided for under Section 54 of the Land Acquisition Act, 1894, wherein even the provisions of CPC have been made applicable.

For the reasons mentioned above, in my opinion, appeal against the order passed by the learned Reference Court in a reference under Section 3-H(4) of the Act is not maintainable before this Court. Accordingly, both the appeals are dismissed. However, dismissal of the appeal shall not debar the appellants to avail any other appropriate remedy against the impugned award in accordance with law.

(RAJESH BINDAL)
JUDGE

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(Refer to Reporter)

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