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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-8514-2017 [O&M]
Date of Decision : April 19, 2018

Kimat Rai and Sons (HUF) through its Karta
Sh. Kimat Rai Sikri Petitioner

Versus

National Highways Authority of India and another
.... Respondents

2. CWP-16853-2017 [O&M]

Veena Rani Petitioner

Versus

National Highways Authority of India and another
.... Respondents

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Sunil Chadha, Senior Advocate,
with Mr. Manipal Singh Atwal, Advocate,
for the petitioners.

Mr. Raghujeet Singh Madan, Advocate,
for respondent – NHA.

Mr. Rajesh Bhardwaj, Sr. DAG, Punjab,
for respondent No.2.

SHEKHER DHAWAN, J.

By this common judgment, we propose to dispose of above
titled two writ petitions together as common questions of facts and law are
involved in the same. For facility of reference, the facts are being taken

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from CWP No.8514 of 2017 titled **Kimat Rai and Sons vs. National Highways Authority of India and another.**

2. The petitioner has challenged notification dated 18.09.2015 (Annexure-P/1) issued under Section 3A of the National Highways Act, 1956 (hereinafter referred to as, '**the Act**') and notification/declaration dated 12.05.2016 (Annexure-P/4) issued under Section 3D of the Act as well as subsequent proceedings taken in pursuance of the said notifications. In CWP No.16853 of 2017, besides challenging the aforesaid two notifications, petitioner, Veena Rani has also challenged award dated 26.04.2017 (Annexure-P/7 in that writ petition). Petitioner (in CWP No.8514 of 2017) is owner of a plot measuring 3 Kanals 8 Marlas (2054 square yards) comprised in Khasra/Survey No.3//23/1(Min), situated in village Jhamat, Tehsil and District Ludhiana (West). Respondent-National Highways Authority of India (for short, '**NHAI**') issued notification dated 18.09.2015 under Section 3A of the Act for widening/four laning and operation of Laddowal Bypass, Ludhiana and in that process acquired land vide notification Annexure P/1. Objections, as provided under Section 3C of the Act, were also invited within a period of 21 days from the publication of the said notification. The petitioner filed detailed objections (Annexure-P/2) to the notification on 14.10.2015. Since the petitioner failed to receive any response with regard to the aforesaid objections, he submitted representation on 30.12.2015 (Annexure-P/3). However, respondent- NHAI issued a declaration dated 12.05.2016 (Annexure-P/4) under Section 3D of the Act without affording any opportunity of hearing, much less granting personal hearing to the petitioner with regard to the objections and even

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conveying the decision taken thereon. The petitioner applied for certified copy of the order disallowing his objections and thereafter filed detailed representation on 18.06.2016 (Annexure P/6). He also submitted supplementary objections on 25.06.2016. The respondent- NHAI issued a notice on 23.03.2016 in the newspaper as required under Section 3G(3) of the Act asking all the persons interested in the land acquired vide declaration Annexure P/4 to prefer their claims. The main grievance of the petitioner is that his objections have been disallowed without affording any opportunity of hearing to him and declaration Annexure P/4 has been issued. As mentioned above, in the second writ petition i.e. CWP no.16853 of 2017 filed on 29.07.2017, petitioner-Veena Rani has challenged the award dated 26.04.2017 as well.

3. Respondent-NHAI filed detailed reply taking preliminary objections that the writ petition is not maintainable, rather the same is misuse of the process of law as the petitioner has sought quashing of notification dated 18.09.2015 (Annexure-P/1), notification dated 12.05.2016 (Annexure-P/4) and the award dated 26.04.2017 (Annexure P/7). The land of the petitioners had been acquired for Laddowal Bypass linking NH-095 with NH-1 via Laddowal seed farm at Ludhiana. The notification under Section 3A of the Act was published in the Gazette of India on 18.09.2015. The substance of the notification was also published in three daily newspapers widely circulated in the locality, namely, "Jagbani" (Punjabi) and "The Tribune" (English) on 12.10.2015, and in "Punjab Kesari" (Hindi) on 13.10.2015 for the information of the public. Certain objections were received from the land owners and the same were decided by the

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competent authority on 09.05.2016. After considering the objections, the Government of India had published a notification under Section 3D(1) of the Act on 12.05.2016. The substance of the said notification was also published in three newspapers on 06.06.2016. As respondent No.2 had decided the objections under Section 3C of the Act, the competent authority pronounced the award on 26.04.2017 in accordance with law. Otherwise, objections dated 14.10.2015 (Annexure-P/2) filed by the petitioner shows that the acquisition was challenged mainly on two grounds (i) road alignment; and (ii) compensation. As regards to road alignment, it has been stated that the same has been designed on the basis of preparation of DPR through bidding system by empanelled consultant of the MoRT&H. M/s Gifford India Private Limited was appointed as consultant for preparation of DPR for four-laning of (Partial Access Control) of Laddowal Bypass linking NH-95 with NH-1 via Laddowal Seed Farm Km. 0.000 to Km. 17.041 under NHDP-VII in the State of Punjab. A detailed study of traffic pattern and highway geometrics of the project highway was carried out for preparation of the report which had further undergone a detailed scrutiny at the level of Project Implementation Unit, Regional Office, NHAI, NHAI HQ and then MoRT&H. The road alignment was envisaged and designed keeping in view the geometries of the road, road safety during construction and after construction etc., and as such the change of alignment for the benefit of an individual cannot be considered. The entire procedure for acquisition of the land in question had been followed under the Act. The planned alignment is, therefore, designed as per required highway geometrics and hence, any modifications to the

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same shall be contrary to the public interest. So far as compensation is concerned, since the award has already been pronounced by the competent authority on 26.04.2017, the petitioner has got alternative remedy before the Arbitrator under Section 3-G (5) of the Act and as such, both the writ petitions are liable to be dismissed.

4. We have heard learned counsel for the parties and also gone through the record.

5. Mr. Sunil Chadha, learned senior counsel representing the petitioners mainly contended that respondent No.1 had not considered the objections filed by the petitioners and as such, writ petition bearing CWP-8514-2017 was filed on 24.04.2017 and subsequently, after pronouncement of award dated 26.04.2017, second writ petition bearing CWP-16853-2017 was filed on 29.07.2017 wherein the award dated 26.04.2017 is also under challenge. As per the provisions of Section 3C of the Act, the respondents are legally bound to consider and decide the objections after considering all the material available on the file and even by giving opportunity of being heard to the parties, but that has not done so in the present cases and as such the impugned notifications, Annexure P/1 and P/4 and the award Annexure P/7 are liable to be set-aside.

6. Learned counsel representing respondent-NHAI contended that the acquisition of land of the petitioners has been ordered keeping in view the larger public interest as the land was required for the purpose of Laddowal Bypass linking NH-95 with NH-1 via Laddowal seed farm at Ludhiana for which due procedure has been followed at the time of issuance of notification. The objections raised by the petitioners were duly

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considered and thereafter the notification, dated 12.05.2016 (Annexure P/4) was issued and subsequently, award, dated 26.04.2017 was passed. If at all, the petitioners are aggrieved of compensation amount, they are having alternative remedy to challenge the same before the competent authority and the present writ petitions are not maintainable.

7. As regards to the plea taken by learned counsel for the petitioners that some construction was raised on the land in question and as such, the respondent-NHAI should seek alternative land for road alignment and there was no legal requirement to acquire their property for the said purpose. However, such a plea does not carry any weight in the light of specific stand taken by respondent-NHAI to the effect that the preparation of DPR had been undertaken through a bidding system by an empanelled consultant of the MoRT&H. M/s Gifford India Pvt. Ltd. was appointed as consultant for preparation of DPR for Four laning of (Partial Access Control) of Laddowal Bypass linking NH-95 with NH-1 via Laddowal Seed Farm Km. 0.000 to Km. 17.041 under NHDP-VII in the State of Punjab. A detailed study of traffic pattern and highway geometrics of the project highway was carried out for preparation of the report which had further undergone a detailed scrutiny at the level of Project Implementation Unit, Regional Office, NHAI, NHAI HQ various level and then MoRT&H. The road alignment was envisaged and designed keeping in view the geometries of the road, road safety during and after construction and as such the change of alignment for the benefit of an individual cannot be considered. The entire procedure for acquisition of the land in question had been followed under the Act. The impugned acquisition has been

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envisaged by National Highways Authority of India with the consent of Government of Punjab keeping in view traffic projections and aspect of providing alternate routes to reduce congestion in urban areas.

8. As is apparent, the petitioners with a view to save their own property have suggested to acquire the land of other land owners. Such a suggestion being contrary to the public interest has to be discarded, especially when NHAI is expert in job and having arrived at a decision after getting consultancy from experts i.e., M/s Gifford India Pvt. Ltd. Such a view was taken by Hon`ble Apex Court in **Union of India Vs. Kushala Shetty and others, 2011(4) R.C.R. (Civil) 353**, laying down that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited.

9. As regards to the contention raised on behalf of the petitioners

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that their objections have not been decided in accordance with the prescribed procedure or that they have not been heard as per provisions of Section 3C of the Act, the respondents have taken a specific stand that the notice was published in three daily news papers as per the provisions of the Act and only thereafter, the objections were decided and the award was passed on 26.4.2017. There is no express provision under the Act to hear the objectors in person.

10. So far as construction of building on the plot in question is concerned, be that as it may, if the building is obstructing the widening of the National Highway, we have no reason to doubt that such building must also pave way as an individual's interest is always outweighed by the larger public interest involved in the construction of National Highway. There is no gainsaying that the construction of Bypass in such busy locality is utmost necessary and the acquisition of land/property for the construction of bypass or widening of National Highway, deserves to be viewed keeping in view the wider public interest and national interest.

11. Such a view was taken by this Court in **M/s AV Fasteners P.Ltd. & Ors. vs. Union of India & Ors. AIR 2014 (P&H) 178** and it was held as under:-

“National Highways are the backbone of the economy and lifeline of any developing nation. Road transportation is one of the fastest means of delivery of essential goods. Last about two decades have witnessed an accelerated vehicular growth in India, especially the commercial heavy vehicles resulting into long queues and unending traffic jams. The concern shown by the NHAI or other stakeholders to build new roads or widen the existing Highways is a too late wake-up call to be

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appreciated. Such like progressive initiatives should have been taken well in advance. Nonetheless, the construction of a National Highway is an enterprise in right direction and is indeed in larger public interest. The bona fide of the State action is thus beyond any pale of doubt. An individual's hardship, howsoever genuine it may be, has no place to stop or stall the construction of such like public utilities of paramount national importance."

12. Similar view was taken by a Division Bench of this Court in **Mohan Singh Vs. Union of India and others, 2017(3) R.C.R (Civil) 536.**

13. For the reasons afore-stated, we do not find any merit in these writ petitions. Resultantly, both the writ petitions, bearing CWP-8514 and 16853 of 2017 are dismissed.

(SURYA KANT)
JUDGE

(SHEKHER DHAWAN)
JUDGE

April 19, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes