

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23724 of 2016 (O&M)

Date of Decision: 24.09.2019

Jasmel Kaur and another

....Petitioners

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Vikas Mehsempuri, Advocate
for the petitioners.

Mr. Neeraj Madan, Advocate
for respondent Nos.1 to 3.

Ms. Jasleen Kaur Sidhu, AAG, Punjab.

Mr. S.S. Tiwana, Advocate
for respondent No.7.

G.S. SANDHAWALIA, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India for providing passage to the land of the petitioner No.1, mentioned in the Jamabandi for the year 2012-13 (Annexure P-3) which was acquired by respondent Nos.1 and 2 for the Indian Railways, vide award No.24, dated 30.11.2011 (Annexure P-2) passed by the District Revenue Officer-respondent No.3.

Vide order dated 05.07.2019 Karnail Singh was impleaded as co-petitioner in view of the objections taken by respondent No.7 that since the passage as such can only be provided through his land and he was not party.

Counsel for the petitioners submits that since the land as such had to be provided through the land of petitioner No.2, in view of the

situation of the land which is situated adjoining the railway track, he would have no objection, if the said person-petitioner No.2 is duly compensated in lieu of the land which is to be used as passage.

A perusal of the site plan (Annexure P-4) would go on to show that the acquisition vide award No.24 dated 30.11.2011 (Annexure P-2) resulted in the land of the Gram Panchayat being acquired measuring 15 marlas falling in Khasra No.187/1 as per the Jamabandi for the year 2012-13 (Annexure P-3) and the site plan (Annexure P-4). The award was passed for the land situated in village Jalbehri Gehlan, Tehsil & District Fatehgarh Sahib. A part of the land of petitioner No.1 shown in yellow colour was also acquired. On account of acquisition of the revenue rasta, approach to the land of the petitioner No.1 has been cut off. The land of the petitioner was acquired along with the land of Karnail Singh. At present petitioner No.1 is getting access through the balance land of Karnail Singh petitioner No.2 falling in Khasra No.24//2 which abuts the road which is leading to village Mathi. It is, thus apparent from point (I) shown in the site plan (Annexure P-4) to the road, a rasta can be provided as such through the balance land of Karnail Singh. An amount of Rs.66,41,790/- was paid to the Panchayat Samati, Sirhind by way of Cheque dated 13.12.2013 (R3) on account of the compensation by the Railways. A direction vide letter dated 17.12.2013 (Annexure R-4) had also been issued by Additional Deputy Commissioner (Development) to the Block Development and Panchayat Officer to the effect that the amount be not spent till further orders and to keep it pending in the banks in the shape of FDR on account of pending litigation.

The stand now of respondent No.7 Gram Panchayat is that the

amount has been spent on the development works of the village and the Gram Panchayat has no concern with the alternative passage to be given after acquisition of Khasra No.187/1. The stand of the official respondent Nos.5 and 6 is that it had nothing to do with it as it is the duty of the Railways to give passage to the petitioner No.1.

Respondent No.1 to 3 in their written statement have claimed that the compensation amount for the passage has already been received by the Executive Officer Panchayat Samiti Sirhind and now petitioner No.1 can claim the right of passage from the concerned Rural Development and Panchayat Department. It is their stand that the arrangement of passage was required to be done out of the compensation of acquired passage as received by respondent No.5.

Thus, in view of the above circumstances, this Court is of the concerned opinion that it is bounden duty of respondent No.5 to ensure that whatever amount was received by way of compensation should have been kept secured and to ensure that all aggrieved persons as such could get redressal. The stand now taken is not justified and the State can not wash its hands from its responsibility without providing alternative passage. It should have monitored the funds of the Gram Panchayat and not permitted the total disbursement of the amounts.

Counsel for the petitioners has relied upon similar order passed by the Division Bench in CWP No.1745 of 2015 titled as **Shingara Singh and others Vs. Union of India and others**, decided on 09.11.2016 whereby directions were issued that the land will be acquired for construction of the passage. The said order reads as under:-

*“The controversy pertains to construction of a
‘Minimum 15 feet wide passage’ for the petitioners to*

enable them to have access to their agricultural land. The petitioners are left with no passage after acquisition of a part of their land by the Railways. The Land Acquisition Collector in its Award has specifically directed the Railways to construct a new passage, width of which should be minimum 15 feet.

Learned counsel for the Railways states that the entire amount required for construction of such passage has been disbursed to the Gram Panchayat of the village for doing the needful.

Learned counsel for the Gram Panchayat, on the other hand, though admits that the amount has been received from the Railways but submits that Gram Panchayat has no power to acquire the land for construction of passage as such a power can be exercised either by Railway Authorities under the Act or the State. He fairly states that the Gram Panchayat is willing to return the amount to the Railways to the extent it is needed for acquisition of the land.

Counsel for the petitioners further points out that one Kakka Singh of the village has no objection if his land is acquired for the purpose of construction of passage.

In view of the above stated stand taken by the parties, we direct the Railway Authorities to acquire the land for the passage as per the Award of the Collector, whether by negotiation with Kakka Singh or otherwise. The amount as may be needed to pay compensation/price for such land shall be reimbursed by the Gram Panchayat to Railway Authorities out of the amount already received by it from Railways.

The writ petition is accordingly disposed of with a direction to the Railways to acquire the land within four

months and as soon as the land becomes available, the petitioners shall be at liberty to use the same as a passage.”

Resultantly, keeping in view the above, directions are issued to respondents No.4 to 6 to ensure that the petitioner No.1 is provided access through the land of the petitioner No.2 in accordance with law.

Resultantly, Karnail Singh will be duly compensated for the loss of land for providing the passage, the area of which will be determined at the spot by the relevant revenue authorities. Thereafter, Karnail Singh petitioner No.2 will be paid the amount of value of his land by respondent No.6. It will be open to the respondents to adjust the said amount from the funds to be paid to respondent No.7 in future. The said exercise be completed within a period of 6 months from the date of receipt of the certified copy of this order.

The writ petition is accordingly allowed.

(G.S. SANDHAWALIA)
JUDGE

24.09.2019
pvd

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No