

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2879 of 2018
Date of Decision: 24.07.2019

Harwinder Singh & Ors.

...Petitioners

Vs.

Union of India & Ors.

...Respondents

CWP No.1817 of 2018
Date of Decision: 24.07.2019

Rajinder Singh

... Petitioner

VS.

Union of India & Ors.

... Respondents

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

Present: Mr. Akshay Bhan, Sr.Advocate with
Mr. HPS Sandhu, Advocate;
Mr. Tarun Kumar, Advocate for
Mr. Nitin Kaushal, Advocate for the petitioners

Mr. DK Singhal, Advocate and
Mr. RS Madan, Advocate for NHA

Ms. Jasleen Kaur Sidhu, AAG Punjab

G.S. SANDHAWALIA, J. (Oral)

This order shall dispose of above-captioned two writ petitions as the point in issue is common. For the sake of disposal, CWP-2879-2018 is being treated as the lead case.

The present writ petition challenges the award dated 04.08.2016 qua the petitioner passed by the Competent Authority, Land Acquisition/Sub-Divisional Magistrate, Ludhiana (West) (P8) being illegal, arbitrary, primarily on the ground that the land which has been acquired of the petitioner under the National Highways Act, 1956 was falling within the urban area of the Municipal Council, Samrala. It is the case of the

petitioners that they have filed objections under Section 3-C of the 1956 Act before the Competent Authority who vide order dated 04.08.2016 (P7) assessed the market value @ Rs.50,42,400/- per acre for village Ladhran Hadbast No.86, Tehsil Samrala, District Ludhiana. It is the case of the petitioner that another award was passed qua the land included within the Municipal boundaries of MC Samrala wherein the amount of compensation was assessed @ Rs.97,36,480/- per acre for chahi land and Rs.1,44,45,706/- for *gair mumkin* land. In such circumstances the amount of compensation as such awarded has been challenged.

A perusal of the award would show that for village Ladhran, the land of the petitioner was shown as agriculture in column No.7. Various types of land have also been shown having *gair mumkin* plinth, house, petroleum pump, service station, school etc. On the basis of rate fixed as such vide the award, different amounts have been fixed for chahi @ Rs.50,42,400/- per acre and for *gair mumkin* @ Rs.96 lakhs. Similarly, various other amounts have been awarded for other villages also as per the chart given below:-

Sr. No.	Name of village	Type of land	Area acquired in marlas	area acquired in acres	Basic Market rate fixed for compensation (marlas)	Basic Market Rate fixed for compensation (Acres)	Total Compensation for Basic Market Rate
1	Ladhran HB No.86	Chahi	2148	13.425	31515	5042400	67694220
		Gair Mumkin	204	1.275	60000	9600000	12240000
2	Rohlan (HB No.87)	G.M.	212	1.325	59238	9478080	12558456

3	Bijlipur HB No.142	G.M.	211	1.31875	69070	11051200	14573770
4	Neelon Kalan HB No.85	G.M.	434	2.7125	43361	6937760	18818674
5	Lall Kalan HB No.259	G.M.	2237	13.98125	60410	9665600	135137170
			5549			Total	26,10,22,290

Thus it is apparent that for gair mumkin the amount varies for different villages in the revenue estates.

The stand of the official respondents No.3 in the preliminary submission also is that the petitioners have right to file petition before the Arbitrator appointed under the 1956 Act for enhancement of land compensation apart from the fact that the calculation of rate of compensation has been done according to Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It has been further averred that calculation of the price of land for acquisition is done on the basis of actual sale transaction in the village concerned.

In the replication, para 3 has not been specifically denied and thus it is apparent that even the petitioners are aware that they have got an alternative and efficacious remedy of appeal before the statutory Arbitrator.

Respondent No.2 in its reply has also taken the same plea and referred to the judgment of this Court in **CWP No.29431 of 2017 Phool Singh vs. National Highway Authority of India & Ors.** decided on 12.03.2018. The decision as such pertained to the issues on claim of *solatium* and interest which had been preferred and in similar circumstances

awards of the LAC had been challenged before this Court. It was noticed that the landowners in that set of cases had earlier also preferred the applications before statutory Arbitrator and also gone to the Additional District Judge and thereafter approached the writ Court. The relevant portion of the judgment reads as under:-

*“Thus, in view of the alternative remedy as such available, it is always open to the petitioner to seek recourse to his alternative remedy for the statutory benefits which are due as it is settled principle that recourse to the writ court cannot be made if there is efficacious and alternative remedy available. The Apex Court in **United Bank of India Vs. Satyawati Tondon and others, 2010 (8) SCC 110** has noticed the principles of alternative remedy. It was observed that it was a self imposed restraint and the alternative remedy was a rule of discretion and not one of compulsion. The relevant observations read as under:-*

“44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative

remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.”

The principle as such is similar and more-so since disputed issues also regarding the market value of the land in question has to be gone into. The statutory arbitrator would be best suited to go into this thicket of disputed question as it is settled law that the writ court would not tread where the facts are not clear and the compensation is to be based upon sale exemplars of the area. Similar landowners would have already approached the statutory Arbitrator and therefore it would further lead to a very paradox situation since an appeal is provided as award of the Arbitrator can be challenged under the 1996 Act and a further appeal is provided to this Court and therefore it would lead to contradictory orders being passed if the statutory remedy as such is not availed. In such circumstances keeping in view the settled principle of law once there is an alternative remedy available more so as per Sections 3-G(5) & (6) of the Act provides a forum for the landowners who do not accept the amount determined by the competent authority. They thus have a right to approach the Arbitrator to be appointed by the Central Government. The relevant provision read as under:-

“(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.”

The writ petitions are disposed of being not maintainable before the writ court and petitioners are relegated to the remedy of statutory Arbitrator in accordance with law. It is made clear that this Court has not expressed any opinion on merits of the case regarding quantification of the amount.

The writ petitions stand disposed of accordingly.

24.07.2019
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(G.S. Sandhawalia)
Judge

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |