

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

1. Civil Writ Petition No.4413 of 2016

Date of decision: 17.07.2019

Hardip Singh

...Petitioner

Versus

The Union of India and others

...Respondents

2. Civil Writ Petition No.24676 of 2016

Surjit Singh

...Petitioner

Versus

The Union of India and others

...Respondents

3. Civil Writ Petition No.25254 of 2016

Rashpal Singh

...Petitioner

Versus

The Union of India and others

...Respondents

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

Present: Ms. Anupam Bhanot, Advocate for the petitioner
(in all the petitions).

Mr. D.K. Singhal, Advocate for NHAI.

Ms. Jasleen Kaur Sidhu, AAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of Civil Writ Petition Nos.4413, 24676 and 25254 of 2016 as common questions of fact and law are involved in these petitions. However, for dictating this order, the facts have been taken from Civil Writ Petition No.4413 of 2016.

The petitioner seeks quashing of notification dated 5.7.2013

D of National Highways Act, 1956 (hereinafter referred to as “the Act”). Challenge has also been raised to the award dated 10.10.2014 (Annexure P/2). Direction was also sought that the respondents should consider the land of the petitioner as Gair Mumkin Abadi and amend the revenue record wherein the land in question was mentioned as Nehri instead of Gair Mumkin Abadi.

The case of the petitioner is that the petitioner is registered owner of marriage palace known as “Guleh Palace” and applied for change of land use and had started construction in the year 2001. The said marriage palace was constructed in Khasra Nos.156//4/1/1, 156//4/1/2, 156//3/2, 156//3/2/2, 156//3/2/1 of village Sarhali Kalan, Tehsil and District Tarn Taran. The parking area of the marriage palace was situated in Khasra No.1066 which was the adjoining land of the said marriage palace. Notification dated 5.7.2013 (Annexure P/1) had been issued for acquiring the land for expanding the National Highway No.15 by four laning through respondent no.2. The objections had been raised that Khasra No.156//4/1 had been shown as “Agricultural land” but as per revenue record since 1998 the land falls under category “Residential” as shops and store rooms were built. It is averred that from the notification it would be clear that the adjoining areas were shown as Gair Mumkin Abadi but the land in question as such was shown as Nehri. Reliance has been placed upon the map appended as Annexure P/3.

It is submitted that without deciding the objections filed final notification under Section 3-D of the Act had been issued and the SDM, Tarn Taran had passed the award on 10.10.2014 (Annexure P/2) and as per category of land, compensation had been awarded.

Accordingly, it is submitted that the land in question was commercial but has wrongly been shown in the notification as Nehri. Reliance has been placed upon the revenue record (Annexures P/4 and P/5) wherein the land was shown as Gair Mumkin and has also mention of marriage palace name as “Guleh Palace”.

Keeping in view the above pleadings and the defence that had been taken by respondents no.2 to 4, respondent no.5 Sub Divisional Magistrate, Tarn Taran had been asked to come present in Court and the following order was passed on 5.4.2018:-

“Ms. Amandeep Kaur, respondent No.5-Sub-Divisional Magistrate, Tarn Taran, in pursuance of the last order is present in the Court. She has submitted that she has joined recently on the said post and assures this Court that she will take action on the request (Annexure P-3) within a fixed time frame, since the only grouse of the petitioner is that Khasra No.156/4/1 situated in village Sarhali Kalan, District Tarn Taran was being shown as Nehri (Agricultural), but the same falls under Abadi Deh since 1998, as many stores and shops were built there.

Let, the action be taken on the said representation and the status report be placed before this Court. In case the status report is submitted before this Court, respondent No.5 need not be present on the next date of hearing.

Adjourned to 25.05.2018.

Photocopy of this order be placed on the file of connected cases.”

In pursuance of the aforesaid order, affidavit dated 23.5.2018 of the SDM, Tarn Taran was filed which reads as under:-

“1. That as per directions of your Hon'ble Court vide order dated 5.4.2018, I hereby submit the status report with regard to Khasra No.156/4/1 situated at village Sarhali Kalan, Tehsil & District Tarn Taran. I visited the spot

personally along with Naib Tehsildar Naushehra Pannuna Kannugo Sarhali Kalan and Patwari Sarhali Kalan and found that there were shops in Khasra No.156/4/1 which were on the front of road known as National Highway no.15. Later on, the said road was converted into four lanes and its number was changed as National Highway No.54. The 35 feet land of petitioner acquired for road and the shops was demolished and road was constructed at the spot. The statements of persons belonging to the locality were also recorded. The persons stated that there were shops which were demolished and the land was acquired for road. I further verified the revenue record i.e. Khasra Girdawari 2012-13 which shows that the land Khasra no.156//4/1/1(1-2) and 156//4/1/2 (0-9) is shown as gair mumkin palace.

2. That as per revenue record 2012-13 Khasra Girdawari and spot inspection the nature of acquired land is not agriculture/Nehri. The nature of acquired land is Gair mumkin abadi.”

From the above, it would be apparently clear that the case of the petitioner has substance in as much as the area had been wrongly shown as Nehri/agriculture land whereas the same had been shown being used for “Abadi” purpose.

In such circumstances, amount of compensation which had been awarded on the basis of type of land is less in comparison than the claim of the petitioner.

Counsel for the respondents Mr. D.K.Singhal, has submitted that there is an alternative remedy as such to which the petitioners can be relegated.

Keeping in view the fact that the considerable progress has been made in the matter by summoning the SDM, Tarn Taran and keeping in view of the affidavit filed by the SDM, Tarn Taran, this court does not

feel at this stage that the petitioners should be relegated before the Arbitrator since it is always discretion of the writ Court whether the petitioner is to be relegated to the alternative forum or not. NHAI had initially not been impleaded as respondent and stepped into the picture later on 25.5.2018 when it was impleaded as respondent after the Sub Divisional Magistrate had appeared before this Court.

In such circumstances, it would be appropriate if respondent no.5-Sub Divisional Magistrate-cum-Land Acquisition Collector, Tarn Taran passes a supplementary award qua the claim of the petitioners as discussed above and grants compensation as per the correct type of land which the petitioners own in view of the aforesaid affidavit of the SDM and the revenue record. The necessary exercise be carried out within a period of two months from the date of receipt of certified copy of this order after associating NHAI with the process.

July 17, 2019
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No