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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

33, 34 and 35

+ **W.P.(C) 5822/2018 & CMs 22631/2018, 37292/2018 and 53835/2018**

ANUBHAV CHAND KATHURIA Petitioner
Through: Mr Rajesh Yadav and Mr Ruchira,
Advocates.

versus

UNION OF INDIA AND ORS. Respondents
Through: Ms Padma Priya, Mr Mukesh Kumar
and Ms Soumya Priyadarshni,
Advocates for NHAI.
Mr Yeeshu Jain and Ms Jyoti Tyagi,
Advocates for LAC/L&B.
Ms Tara Narula and Ms Nidhi
Nagpal, Advocates of CA.

+ **W.P.(C) 5831/2018 & CMs 22659/2018, 37294/2018 and 53837/2018**

ANUBHAV CHAND KATHURIA Petitioner
Through: Mr Rajesh Yadav and Mr Ruchira,
Advocates.

versus

UNION OF INDIA AND ORS. Respondents
Through: Ms Padma Priya, Mr Mukesh Kumar
and Ms Soumya Priyadarshni,
Advocates for NHAI.
Mr Yeeshu Jain and Ms Jyoti Tyagi,
Advocates for LAC/L&B.

+ **W.P.(C) 5846/2018 & CMs 22701/2018, 37293/2018 and 53833/2018**

SUBHASH CHAND KATHURIA AND ANR. Petitioners
Through: Mr Rajesh Yadav and Mr Ruchira,

Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms Padma Priya, Mr Mukesh Kumar
and Ms Soumya Priyadarshni,
Advocates for NHAI.
Mr Yeeshu Jain and Ms Jyoti Tyagi,
Advocates for LAC/L&B.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

J U D G M E N T
19.02.2019

Dr. S. Muralidhar, J.:

1. These three petitions arise out of a common set of facts and are being disposed of by this common judgment.
2. All three petitions arise out of an Award dated 2nd April, 2018 passed under Section 3-G of the National Highways Act, 1956 ('NH Act') pertaining to the land of the Petitioners in Village Bannoli, Kapashera, District South West, New Delhi (hereafter, 'the land in question').
3. The main grievance of the Petitioners is that despite declarations having been issued by this Court in writ petitions filed by the Petitioners that the land acquisition proceedings earlier initiated by the Government of the NCT of Delhi (GNCTD) are deemed to have lapsed under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act'), the notifications issued under the NH Act, seeking to again acquire these lands have wrongly

described the land in question to be 'government land'. Their grievance is that while in two of the writ petitions (W.P. (C) Nos. 5822 and 5846 of 2018), the Competent Authority ('CA')/Respondent No.3 accepted the plea of the Petitioners and substituted the description of the land as 'private' in place of 'government', but in the third matter [out of which W.P.(C) No. 5831/2018 arises], the CA declined to do so.

4. As regards the impugned Awards dated 2nd April 2018 of the CA, the general grievance in all three cases, is that compensation has been determined based on the circle rates for agricultural lands whereas Village Bamnoli falls in category 'G' having been urbanized by a notification dated 24th October, 1994 under Section 507 of the Delhi Municipal Corporation Act ('DMC Act'), identifying Village Bamnoli as a Low Density Residential Area ('LDRA'). According to the Petitioners, it has been further acknowledged as an urban extension by a notification dated 18th June, 2013 issued by the Ministry of Urban Development, Government of India under Section 11-A of the Delhi Development Act.

5. During the pendency of these writ petitions, an application was filed in each of the writ petitions for interim directions, apprehending the appointment by the Central Government of the concerned District Magistrate ('DM') as an Arbitrator in terms of Section 3-G (5) of the NH Act. In those applications on 19th December, 2018, this Court had passed an interim order directing that till the next date of hearing, no proceedings in the arbitration shall take place.

6. This Court has heard the submissions of Mr Rajesh Yadav, learned

counsel appearing for the Petitioners, Ms Padma Priya, learned counsel appearing for the National Highways Authority of India (NHAI), Mr Yeeshu Jain, learned counsel appearing for the Land and Building Department, GNCTD and Ms Tara Narula, learned counsel appearing for the CA.

7. The common fact is that the lands in question are located in Village Bamnoli. The further undisputed fact is that these lands were earlier sought to be acquired by initiating proceedings under the Land Acquisition Act, 1894. By orders dated 14th October, 2014 passed in W.P.(C) No.4519/2014 and 15th December, 2014 passed in W.P.(C) No.7773/2014, a declaration was issued by the Court under Section 24 (2) of the 2013 Act, that the land acquisition proceedings were deemed to have lapsed. These orders were affirmed by the Supreme Court with the dismissal of the SLPs filed by the GNCTD on 8th September, 2016 and 4th May, 2017. An SLP filed by the Delhi Development Authority (DDA) against the order dated 15th December, 2014 in W.P.(C) No.7773/2014 was also dismissed by the Supreme Court on 28th August, 2017. Consequently, at the time that the lands in question were again sought to be acquired by issuance of the notification under the NH Act, these lands were no longer government lands but private lands.

8. Notifications were issued under Section 3A of the NH Act on 15th May, 2017 for the acquisition of the aforementioned lands. As far as the lands forming part of subject matter of W.P.(C) No.5831/2018 in Khasra / Survey Nos. 25/12/2, 25/14/1 and 25/22/2, total area measuring 0.16 hectares in Village Bamnoli, the notification described the land as ‘government’ and the nature of the land as ‘agricultural’ whereas the notification in respect of the

lands forming subject matter of W.P.(C) Nos. 5822/2018 i.e. Khasra Nos. Nos.38//2, 25//18, 25//22/1 and 25//23 admeasuring 0.7695 hectare in Village Bamnoli and land forming subject matter of W.P.(C) No. 5846/2018 (Khasra Nos. 22//6, 22//15 22//16, 25//11, 25//19, 25//20, 25//21, 26//25, 37//4, 37//5, 37//6, 37//7 and 38//1, total area measuring 2.8638 hectare) mentioned the type of land as 'private' and the nature of the land as 'agricultural'.

9. The aforementioned three notifications under Section 3-A of the NH Act were followed by the declarations under Section 3-D of the NH Act. This time, in respect of all three parcels of lands, the type of land was described as 'government' and the nature of the lands 'agricultural'.

10. Admittedly, the objections filed by the Petitioners under Section 3-C of the NH Act were rejected by the CA on the ground that they were filed beyond the period of 21 days from the date of the publication of the notification.

11. The CA then passed separate Awards dated 2nd April, 2018 in respect of the three parcels of lands. In respect of the lands forming subject matter of W.P.(C) Nos.5822/2018 and 5846/2018, he treated the type of lands as 'private', instead of 'government', after noting the submissions of the DDA and the NHAI. However, the nature of the lands was taken to be 'agricultural' and compensation was computed @ Rs.53 lakhs per acre, based on the circle rates of agricultural lands.

12. As regards the lands forming subject matter of W.P.(C) No.5831/2018,

the CA in the Award dated 2nd April, 2018, continued to treat the type of land as 'government' and the nature of the lands as 'agricultural' and computed compensation on that basis.

13. At this juncture, it is necessary to refer to Section 3-G of the NH Act, which reads as under:

“3G. Determination of amount payable as compensation.

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(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.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.”

14. It will thus be seen that the determination of compensation payable for any land sought to be acquired under the NH Act is, in the first instance, by an order of the CA in terms of Section 3G (1) of the NH Act. If such a determination is not acceptable to either of the parties, then in terms of Section 3G (5) of the NH Act, an application can be filed which would be decided by an Arbitrator to be appointed by the Central Government. Admittedly, in the present case, the DM has been appointed by the Central

Government to be the Arbitrator to decide the applications filed by the three Petitioners against the Awards dated 2nd April, 2018 passed by the CA.

15. Mr Yadav, learned counsel for the Petitioners, however, submits that in respect of the lands forming subject matter of W.P.(C) No.5831/2018, since the CA declined to correct the type of land as 'private', instead of 'government' in the notifications under Section 3-A and 3-D of the NH Act, this Court should send the matter back to the CA for that purpose. He based his submissions on the fact that the CA had, in respect of the other two parcels of lands, forming subject matter of W.P.(C) Nos.5822/2018 and 5846/2018, accepted such a plea of the Petitioners. It is submitted that there was no basis for him to decline to do so only in respect of the lands forming subject matter of W.P.(C) No.5831/2018. It is the categorical plea of Mr Yadav that the CA does have the power to make corrections to the factual errors in the notifications issued under Sections 3A and 3D of the NH Act.

16. Ms Padma Priya, learned counsel for the NHAI, also did not dispute that the CA has such a power.

17. The question that arises is whether in view of the fact that the Petitioners have an efficacious remedy by way of arbitration before the Arbitrator appointed in terms of Section 3G (5) of the NH Act, this Court should entertain the present petitions under Article 226 of the Constitution?

18. Mr Yadav expressed the apprehension that the remedy of arbitration would not be efficacious as far as the Petitioners are concerned. According to him, the objections in this regard are three-fold. First, he states that the

DM appointed by the Central Government would not be impartial. The Petitioners cannot expect to get a satisfactory order in the arbitration proceedings. He submitted that the DM is disqualified from acting as an Arbitrator in terms of Section 12 (5) of the Arbitration and Conciliation Act, 1996 ('AC Act') read with the Entry 1 in the Seventh Schedule to the AC Act. Secondly, Mr. Yadav submitted that the only remedy available to the Petitioners against the Award of such Arbitrator would be a petition under Section 34 of the AC Act, where the scope of challenge would be extremely limited. Thirdly, it is submitted that the Arbitrator may not be able to go behind what is stated in the notifications under Sections 3A and 3D of the NH Act, as far as the type and nature of the land is concerned.

19. In reply, Ms Padma Priya, learned counsel for the NHAI submits that an Arbitrator acting under Section 3G (5) read with 3G (6) and 3G (7) of the NH Act would be exercising the same powers that the CA exercises. Therefore, for the purposes of determination of compensation, the Arbitrator would be able to correct any factual errors in the notifications issued under Section 3A and 3D of the NH Act. Ms. Padma Priya next submitted that the DM appointed by the Central Government is not an 'employee' of the NHAI and, therefore, is not disqualified from acting as an Arbitrator, even in terms of Section 12 (5) of the AC Act read with the Seventh Schedule thereof. She further submitted that the NHAI will not raise an objection before the Arbitrator as to his jurisdiction to examine the above issues notwithstanding that the objections filed by the Petitioners under Section 3C of the NH Act were rejected by the CA.

20. This Court has considered the above submissions. Section 3G of the NH Act delineates the scope of the powers of the CA for determining the compensation payable for land acquired in exercise of the powers under the NH Act. Section 3G (7) spells out four factors that are required to be taken into consideration either by the CA or by the Arbitrator while determining compensation. Therefore, the scope of the powers of the CA and the Arbitrator in regard to the determination of compensation is no different. In other words, what the CA can do under the NH Act, as far as the determination of compensation is concerned, can well be done by the Arbitrator. If the CA can, as has been contended both by the counsel for the Petitioners as well as the NHAI, make corrections to the factual errors in the notifications issued under Sections 3A and 3D of the NH Act, so can the Arbitrator.

21. Therefore, as far as the present cases are concerned, the Petitioners need not harbour any apprehension that the Arbitrator will not be able to exercise the same powers of the CA. In other words, as far as the present cases are concerned, when both the Petitioners and the NHAI have agreed that the CA can correct the factual errors in the notifications issued under Section 3A or 3D of the NH Act and correct the type of the land as 'private' instead of 'government', the Arbitrator can make similar changes.

22. By the same logic, if the Petitioners contend that the nature of the land should not be treated as 'agricultural', that plea can also be examined by the Arbitrator notwithstanding the fact that the CA has not agreed with the Petitioners in that regard in W.P(C) 5831/2018. In other words, the

Arbitrator can and will examine the plea of the Petitioners that in view of the notifications issued under Section 507 of the DMC Act, and the subsequent notifications under the DDA Act, the lands in question are in fact urbanized villages, where the circle rate is much higher than what has been applied by the CA in the impugned order.

23. As already stated on behalf of the NHAI, no objections will be raised by the NHAI before the Arbitrator that he has no jurisdiction to examine such plea. Whether such a plea is tenable on merits is another issue altogether. That will be decided by the Arbitrator by applying his mind to the material placed before him, both by the Petitioners and the NHAI.

24. As regards the plea that the DM as appointed by the Central Government under Section 3G (5) of the NH Act will not act impartially, this Court notes that under Entry 1 of the Seventh Schedule to the AC Act, an employee of one of the parties would be disqualified to act as an Arbitrator. Here, the Central Government itself is not a party to the arbitration. It is the NHAI which is acquiring the land and which is going to be paying compensation for such acquisition, and is a party to the proceedings. Admittedly, the DM is not an employee of the NHAI. Consequently, the Court is unable to agree with the submissions of learned counsel for the Petitioners that the DM is disqualified from acting as an Arbitrator in terms of Section 12 (5) of the AC Act read with the Seventh Schedule thereof.

25. On the general plea that the remedy of arbitration is not efficacious and that the further challenge under Section 34 of the AC Act would be on very narrow grounds, the Court notes that the Petitioners have not

challenged the constitutional validity of either Section 3G (1), (5) or (6) of the NH Act. It is, therefore, not open to the Petitioners to argue that the remedy of arbitration is not efficacious.

26. The Court also notes that where an efficacious alternative remedy is provided under the statute itself, in this case the NH Act, the High Court exercising jurisdiction under Article 226 of the Constitution would generally be reluctant to interfere. In the present case, this Court for the reasons aforementioned, is of the view that the Petitioners should pursue their remedy before the learned Arbitrator in terms of Section 3G (5) read with Section 3G (6) and (7) of the NH Act.

27. Mr Yadav, learned counsel for the Petitioners, referred to a large number of decisions on how the compensation should be determined in respect of the lands which are not agricultural land.

28. This Court would not like to express any view on any of the submissions of either the Petitioners or the NHAI as regards the merits of the Awards passed by the CA. All of the submissions urged in the present petitions, and any other additional submissions that the Petitioners may have, as well as the response thereto of the NHAI are left open to be urged before and considered by the Arbitrator in accordance with law. The Court takes on record the statement on behalf of the NHAI that in the said arbitration proceedings the NHAI will not raise an objection as to the jurisdiction and power of the Arbitrator to correct factual errors in the notifications under Sections 3 A and 3 D NH Act and that he can examine the Petitioner's claim for higher compensation notwithstanding that the objections filed by the

Petitioners under Section 3C of the NH Act were rejected by the CA

29. For all of the aforementioned reasons, the writ petitions are dismissed. The applications are dismissed and the interim orders stand vacated. No costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUAR 19, 2019

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