

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

**1. CR No.2699 of 2020 (O&M)
Date of decision : December 23, 2020**

National Highways Authority of India Petitioner

Versus

Harvinder Singh Matharu and others Respondents

2. CR No.2700 of 2020 (O&M)

National Highways Authority of India Petitioner

Versus

Asha Rani and others Respondents

3. CR No.2701 of 2020 (O&M)

National Highways Authority of India Petitioner

Versus

Baljeet Singh and others Respondents

4. CR No.2702 of 2020 (O&M)

National Highways Authority of India Petitioner

Versus

Iqbal Singh and others Respondents

5. CR No.2703 of 2020 (O&M)

National Highways Authority of India Petitioner

Versus

Kartar Singh and others Respondents

6.

CR No.2705 of 2020 (O&M)

National Highways Authority of India

..... Petitioner

Versus

Hari Chand and others

..... Respondents

(IN VIRTUAL COURT)

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Chetan Mittal, Sr. Advocate with
Mr. R.S. Madan, Mr. Mayank Aggarwal and
Mr. Mahender Joshi, Advocates for the petitioner.

Mr. Charanpal Singh Bagri, Advocate
for the respondents-Caveators.

RAJBIR SEHRAWAT, J. (ORAL)

This order shall dispose of abovesaid six petitions bearing CR Nos.2699 to 2703 and 2705 of 2020. For reference, the facts are being taken from CR No.2699 of 2020.

Petitioner is seeking quashing of the order dated 14.10.2020 whereby the Lower Appellate Court has granted ex-party stay against the petitioner restraining them from taking possession of the land acquired for national highway and further for setting aside the order dated 18.11.2020 whereby the application for vacating the abovesaid order dated 14.10.2020 has been dismissed by the Lower Appellate Court.

The brief facts involved in the petitions are that the land of the respondents was acquired for the purpose of construction of a national highway by the petitioner. As per the provisions of the National Highway Act, 1956, the competent authority had determined the compensation payable to the respondents for the acquired land. As claimed by the

petitioner, the petitioner has a right to challenge the Award passed by the competent authority before the Arbitrator, under the provisions of the National Highways Act. Accordingly, the matter was referred to the Arbitrator by the Centre Government at the request of the petitioner. While entertaining the arbitration, the Arbitrator had passed an interim order staying the payment of the compensation to the respondents beyond the amount of Collector's rate issued by the Government for the area concerned. Challenging that order passed by the Arbitrator, the respondents had filed CWP No.14872 of 2020. Similar petitions were also filed by the other landowners against whom similar orders were passed by the Arbitrator. Therefore, the entire bunch of petitions was considered by the Co-ordinate Bench of this Court and all those petitions, including the writ petitions filed by the present respondents were decided vide a common order dated 21.09.2020 passed in CWP No.8939 of 2020. Vide this order, the Co-ordinate Bench had observed that against the order passed by the Arbitrator the respondents were having an alternate remedy of filing appeal before the Appellate Court. Hence the respondents were granted opportunity to approach the Appellate Court so as to avail their remedy of appeal under Section 37(2) of the Arbitration and Conciliation Act, 1996. Further direction was issued to the Lower Appellate Court to decide the aspect of interim order after granting opportunity of hearing to both the sides.

Thereafter, the respondents approached the Lower Appellate Court by way of the appeals. With the appeals, the respondents filed application for staying the order passed by the Arbitrator. Besides this; another application was also filed seeking stay against their dispossession

by the petitioner. Although, the application seeking stay against the interim order passed by the Arbitrator was kept pending by the Lower Appellate Court, however, the Lower Appellate Court allowed the application of the respondents seeking stay against their dispossession. It is against this order that the present petitions have been filed by the National Highways Authority of India.

Having perused the paper book, this Court finds that there was a specific direction issued by the Co-ordinate Bench to the Lower Appellate Court to decide the issue of the interim order after hearing both the sides. However, a perusal of the impugned order shows that the same has been passed without hearing the present petitioner. Although, learned counsel for the respondents/caveators has pointed out that this order has been passed qua a separate application moved by the respondents against their dispossession and not regarding the order passed by the Arbitrator, however, this Court is of the view that stay against the dispossession is only an extension of the prayer which has been made by the respondents while seeking stay against the order passed by the Arbitrator. Hence, even this order could not have been passed by the Lower Appellate Court without hearing the petitioner. Not only this, even the application moved by the petitioner before the Lower Appellate Court for vacation of the ex-party stay order has been dismissed by an order, which is a consideration only on a limited aspect of the matter. Accordingly, without going into the merits of the controversy and into the arguments of the counsel for the parties, this Court is of the considered opinion that the orders impugned in the present petitions deserve to be set aside only on the ground that the said orders have

been passed without granting proper and due opportunity of hearing to the petitioner.

Still further, since the issue involved in these petitions is concerning an aspect of national interest, in which unnecessary delay has to be avoided, therefore, it would also be appropriate if the Lower Appellate Court is directed to take up the appeals filed by the respondents itself; for final disposal; within a time bound frame.

Learned counsel for the petitioner has also submitted that if the Lower Appellate Court is directed to decide the appeals finally within a time bound frame of two weeks, then the petitioner would not insist upon taking the possession of the acquired land till the date granted by this Court for final decision of the appeals by the Lower Appellate Court.

Accordingly, the present petitions are allowed. The impugned orders are set aside.

However, the Lower Appellate Court is directed to finally decide the appeals filed by the respondents; latest by 20.01.2021.

Till 20.01.2021, the petitioner would be bound by its undertaking as mentioned above and would not insist upon taking of the possession of the acquired land from the respondents.

It would also be in the fitness of the things and in the interest of justice, if these matters; which are pending before the Lower Appellate Court; are assigned to another officer. Hence it is also directed that the concerned District and Sessions Judge would assign the appeals; from which the present petitions have arisen; to another competent Court, who shall decide the same within the abovesaid time period.

Since, the issue has been ordered to be decided within a time bound frame, therefore, the parties are directed to appear; either in person or through their respective counsels; before the Lower Appellate Court on 05.01.2021 for first hearing.

It is also clarified that since this Court is not going into the merits of the controversy or into the respective arguments of learned counsel for the parties, therefore, the parties would be at liberty to raise all their respective pleas, available to them under the law, before the Lower Appellate Court, who shall consider and decide the same, in accordance with law and without being influenced by any observations made by either this Court in this order or anything observed in the impugned orders, which have been set aside hereinabove.

(RAJBIR SEHRAWAT)
JUDGE

December 23, 2020

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Whether speaking / reasoned Yes

Whether Reportable: No