

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

1. CR No.5957 of 2019(O&M)

Executive Engineer, PWD B&R Bathinda ... Petitioners

Versus

Niranjan Singh and others ... Respondents

2. CR No.6210 of 2019(O&M)

National Hihghway Authority of India ... Petitioner

Versus

Harjinder Singh Mann and others ...Respondents

Date of Decision:18.2.2020

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Brijeshwar Singh Kanwar, Advocate for petitioners

RAJIV NARAIN RAINA, J. (Oral)

1. This order will dispose of CR Nos.5957 of 2019 and 6210 of 2019 as common questions of law and facts are involved in both the petitions. However, for the sake of convenience, the facts are being taken from CR No.5957 of 2019.

2. These two petitions under Article 227 of the Constitution have been filed by the Executive Engineer, Central Public Works Department (B&R), Bathinda and National Highway Authority of India through the Executive Engineer challenging the order dated 18.4.2019

of 2019 whereby the petitioners' application under Order 26 Rule 9 of the CPC for appointment of Local Commissioner from amongst revenue officials to visit the site and submit report on the nature of land has been dismissed. Both the petitions have been filed in the month of September, 2019 which is after about five months of the pronouncement of the impugned order.

3. To start with, the land in dispute was agricultural in nature at the time of its acquisition under Section 3-B of the National Highways Act, 1956 (for short "the Act of 1956"). The Land Acquisition Collector, Bathinda rendered his award on 7.11.2014. The respondents were the landowners and being the claimants were not satisfied with the compensation assessed in the award. They challenged the same before the Arbitrator-cum-Commissioner, Faridkot Division, Faridkot demanding enhancement in compensation.

4. The department has accused the Arbitrator of changing the nature of land from agricultural to Gair Mumkin and thereby awarding huge amount of compensation without any basis or valid reason. In the objection filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act of 1996"), the department pleaded that the nature of the land cannot be changed after publication of notification under the Act. In doing this, the Arbitrator committed grave misconduct by changing the character of land against the law and facts.

5. The land was under cultivation with standing wheat crop at the time when the application for appointment of Local Commission was made to the Commercial Court. Since huge amount of money is involved in the case, a request was made that some senior revenue officer be appointed as Local Commissioner to visit the site, take photographs and

prepare video recording of the land in question and submit its report to the Court. Objection was raised with respect to appointment of Local Commissioner by the landowners-opposite party.

6. The acquired land falls contiguous to the National Highway. Sealed Compact Disc prepared by the petitioners is attached with CR No.5957 of 2019 as Annex. P-4. The award of the Collector is attached as Annex.P-2. The land is required for widening and four laning of the Highway falling alongside the National Highway No.15 on the stretch of land from Km 265.700 to Km 287.215 (Bathinda Section) of Bathinda District in the State of Punjab. The acquisition covered 8 villages along both sides of the widening project.

7. The award of the Arbitrator is attached as Annex. P-3 in Arbitration Case No.903 of 2016 ('Niranjan Singh and others vs. Union of India and others'). The landowners contended in the Commercial Court that part of the land under acquisition is not agricultural land and is being used for commercial purposes for use of parking in the adjoining Marriage Resorts, while some parts of the land had wayside shops and let for commercial use. Hence, the compensation amount would be liable to be determined in accordance with First Schedule of Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act of 2013"). The Arbitrator held that the land is not commercial in nature falling in village Goniana Khurd. Commercial rates were ruled out as agriculture rates will apply as per the revenue record. A report was sought from the Sub Divisional-cum-Compensation Authority Land Acquisition, Bathinda by the Arbitrator regarding market value of roadside Gair Mumkin land.

Mumkin land of Goniana Khurd by assessing it to be ₹ 10,000/- per Square Yard. No further comment is made nor any opinion expressed on merits since the proceedings are pending under Section 34 of the Act of 1996 and those will be decided in accordance with law uninfluenced by anything said in this order, since the question here is limited to the application for appointment of Local Commissioner

8. Turning to the impugned order, learned Commercial Court who has declined the application for appointment has rightly limited the examination of the issue to the scope of the civil court to be exercised under the provisions of the Act of 1996. The learned Judge has held that the applicant under the guise of the application intends to collect and to tender evidence which he has observed is not a relevant consideration in the disposal of the application as per law. Even in ordinary civil cases, a Local Commissioner cannot be appointed to collect evidence for the asking. The land was acquired in 2013 and after six years, the present position of the land adjoining to the acquired land is also irrelevant because of the agricultural purposes it has been put to by the ex-landowners with land vesting in the Central Government.

9. On the rival contentions of the parties, the Commercial Court has found that the pending application under Section 34 of the Act of 1996 shows that the Arbitrator has gone through the evidence and decided the matter which is under challenge before the court. The appointment of Local Commissioner to visit the spot and ascertain the nature of the land, and that too adjoining the acquired land or falling nearby, is is not useful for adjudication of the present application. Moreover, the nature of the land in 2019 cannot be considered as the nature of the land in the year 2013 when the nearby land was acquired.

10. Having heard the counsel I believe the court *a quo* is correct in its thinking that the face of the land alters irretrievably and its past history is open to viewing only by satellite images and the description of the land in the revenue papers at the time of acquisition is alone of concern in assessment of just and reasonable compensation. The rest is immaterial in determining compensation for the land acquired payable on the principles in the Act of 2013 which came into force on 1.1.2014. The Local Commissioner, if appointed, would be looking at the adjoining land which has not been acquired to match it with the acquired land. If in the meantime, wheat crops have been sown, the one who plants shall reap the harvest and the petitioners can at best recover the mesne profits as the crop is sown on land vesting with the petitioners. Standing crop in non-acquired land is not the business of the Authority.

11. Moreover, it is no longer a debatable issue whether a revision is maintainable against an order declining appointment of a Local Commissioner. It is not maintainable. In Harvinder Kaur vs. Godha Ram, ILR 1979 (1) Punjab & Haryana 147: AIR 1979 Punjab & Haryana 76 this Court held that no revision would lie against an order passed under Order 26 Rule 9 of the Code. Post-amendment to Section 115 CPC the principle has been developed under Article 227 of the Constitution in, among other precedents, Sumer Chand Jain vs. Vishnu Bhagwan Mangla, 2006 (2) RCR (Civil) 445 while relying on Godha Ram and Pritam Singh & Ors vs. Sunder Lal & Ors, (DB): 1990 (2) PLR 191 wherein this Court held as follows:-

"In two Division Bench decisions of this Court in Smt.Harvinder Kaur and another v.Godha Ram and another AIR 1979 Punjab and Haryana 76 and Pritam Singh v. Sunder Lal 1991(1) RRR 356, it has been held

that the order refusing to appoint the Local Commissioner under Order 26 Rule 9 C.P.C is not revisable under Section 115 C.P.C., therefore, such an order should not be interfered now under Article 227 of the Constitution of India. In this regard, in Hari Om v. Minish Kumar (2005-2) PLR 690, it was observed by this Court that if a revision petition under Section 115 C.P.C. against the impugned order is not maintainable, then by mere change in the head note of the petition, the substance cannot be replaced to wriggle out from the rigors of law which is well settled that no revision petition under Section 115 C.P.C is maintainable."

12. The rule was applied again and again by this Court in numerous judgments, for instance, in Bant Singh @ Balwant Singh and another v. Raghubir Singh and others 2008(4) RCR (Civil) 260: 2008(2) RCR (Rent) 297 and Rajiv Kumar Batra vs. Kashmiri Lal Sikka, 2010(6) RCR (Civil) 37 reaffirming that revision petition either under Article 227 of the Constitution of India or under Section 115 of the Code of Civil Procedure is not maintainable against an order dismissing application for appointment of Local Commissioner. This confirms the fact that this is wanton irresponsible litigation which is both frivolous and vexatious and deserves to be dismissed with exemplary costs.

13. In view of the above, both the petitions are dismissed in limine with costs of ₹ 25,000/- each. The costs shall be deposited in the Poor Patient Welfare Fund, Post Graduate Institute of Medical Sciences and Research, Chandigarh for the money to serve a dire social purpose. It would not go to the landowners, since these petitions have been dismissed in limine. The petitioners will deposit this money as directed and produce proof of Online payment on the files of both the cases within three months.

14. In case the amount is not paid, these cases be listed for hearing before the appropriate Bench for further directions, if any, that may be required. It is open to the petitioning NHAI to recover the costs from the officers who advised filing of these patently frivolous petitions which are not even maintainable. It has taken valuable time of the establishment of this Court in processing and listing the cases for hearing and several pages to record the dismissal of the petitions apart from the time of the Commercial Court at Bathinda.

18.2.2020	(RAJIV NARAIN RAINA)
MFK	JUDGE
<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes/No</i>