

**CWP-10182-2021(O&M)
and connected cases**

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

1.CWP-10182-2021(O&M)

Anu Garg @ Anu Jain

.....Petitioner

Versus

Union of India and others

.....Respondents

2.CWP-10184-2021(O&M)

Gurdas Garg

.....Petitioner

Versus

Union of India and others

.....Respondents

3.CWP-10187-2021(O&M)

Kunal Garg

.....Petitioner

Versus

Union of India and others

.....Respondents

Date of decision: 14.07.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr.Ranjit Saini, Advocate, for the petitioner
in all the three writ petitions**

Mr. Sunil K Sharma, Advocate for UOI

ANIL KSHETARPAL, J.

The hearing of the case was held through video

conferencing on account of restricted functioning of the Courts.

1. By this order, three civil writ petitions i.e CWP-10182-2021, 10184-2021 and 10187-2021 shall stand disposed of.

2. The relief sought in these three writ petitions is identical. Learned counsel representing the petitioner in all the three writ petitions is same and states that these writ petitions can be conveniently disposed of by a common order.

3. For convenience, the facts are being noticed from CWP-10182-2021. The petitioners in the various writ petitions were owners of various pieces of land, which were acquired by the Central Government under the National Highways Act, 1956 (hereinafter referred to as the 'Act of 1956'). After the competent authority had determined the amount of compensation for the land acquired, they applied to the Central Government for appointment of an Arbitrator as the compensation determined by the competent authority was not acceptable. The Arbitrator was not only appointed but on 28.10.2010 the award has already been passed. The petitioners pray for a writ in the nature of Mandamus directing the respondent no.3 to release the payment as per the award passed by the Arbitrator.

4. Heard learned counsel for the petitioners at length and with his able assistance perused the paper book. Learned counsel representing the petitioners contends that as per sub-section 6 of Section 3H, where the amount determined by the Arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded by the Arbitrator, is required to be

deposited by the Central Government with the competent authority. He, hence, contends that since the Central Government has failed to follow the statutory mandate, therefore, a writ in the nature of Mandamus is required to be issued. He, while relying upon the judgment passed by the Hon'ble Supreme Court in '**National Highways Authority of India vs. Sayedabad Tea Company Limited and others**' 2019 SCC online SC 1102, contends that the Act of 1956 is a complete Code and therefore, the application of general law would stand impliedly excluded. He has drawn the attention of the Court to para 18 and 19 of the judgment which are extracted as under:-

“18. After analysing the scheme, it can be assumed that the legislature intended the 1956 Act to act as a complete code in itself for the purpose of acquisition until culmination including disbursement and for settlement of disputes and this conclusion is further strengthened in view of Section 3-J of the Act which eliminates the application of the Land Acquisition Act, 1894, to an acquisition under the 1956 Act.

19. It is settled principles of law that when the special law sets out a self-contained code, the application of general law would impliedly be excluded. In the instant case, the scheme of the 1956 Act being a special law enacted for the purpose and for appointment of an arbitrator by the Central Government under Section 3-G(5) of the 1956 Act

and sub-section (6) of Section 3-G itself clarifies that subject to the provisions of the 1956 Act, the provisions of the 1996 Act shall apply to every arbitration obviously to the extent where the 1956 Act is silent, the arbitrator may take recourse in adjudicating the dispute invoking the provisions of the 1996 Act for the limited purpose. But so far as the appointment of an arbitrator is concerned, the power being exclusively vested with the Central Government as envisaged under sub-section (5) of Section 3-G of the 1956 Act, Section 11 of the 1996 Act has no application.”

He further relies upon the order passed in CWP-13772-2020 dated 03.12.2020 issuing noticing of motion.

6. This Bench has considered the submission and proceeds to analyze the same. Under the Act of 1956, the Parliament incorporated certain enabling provisions for acquisition of the land for building national highway by the Act no.16 of 1997 with effect from 24.01.1997. Under Section 3G, the Act provides that the amount determined by the competent authority is required to be paid to the land owners. If the amount determined by the competent authority is not acceptable to either of the parties then sub-section 5 of the Act of 1956 enables them to apply to the Central Government for appointment of an Arbitrator. Sub-section 6 provides that the provisions of Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') shall apply to

every arbitration under the 1956 Act. Section 3G is extracted 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.

7. From a bare reading of the aforesaid provision, it is apparent that in case the Arbitrator determines the amount in excess of the amount determined by the competent authority, the same is required to be deposited by the Central Government with the competent authority under sub-section 6 of Section 3H.

8. The Act of 1996 makes a provision for enforcement of the award passed by an Arbitrator. It is provided that such award shall be enforced in accordance with the provisions of Code of Civil Procedure, 1908, in the same manner, as if it was a decree of the court. Section 36 of the Act of 1996 is extracted as under:-

“36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in

accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

Provided further that where the Court is satisfied that a prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.]

9. By virtue of sub-section 6 of Section 3G of the Act of 1956 read with Section 36 of the Act of 1996, the award passed by the Arbitrator can be enforced or got implemented as if it is a decree of the

court in accordance with the Code of Civil Procedure, 1908. Normally, whenever the amount is payable for compulsory acquisition of the land, the same is required to be paid with solatium and interest. As per the recent judgment passed by the Hon'ble Supreme Court in '**Union of India vs. Tarsem Singh and others**' (2019) 9 SCC 304 Section 3J of the Act of 1956 has been struck down. It has been held that in case of acquisition under the 1956 Act, the owners shall be entitled to solatium and interest. Hence, the amount payable under the award of the Arbitrator is required to be calculated. The question is whether the High Court in exercise of its writ jurisdiction should entertain the writ petitions, even if the land owners have equally efficacious remedy of an execution petition, before the court of law.

10. The judgment in Sayedabad Tea Company Ltd (supra) has no application in the facts of the present case. In that case, the question which arose for determination was whether the application under Section 11 of the Act of 1996 is maintainable in view of Section 3G(5) of the Act of 1956. The Hon'ble Supreme Court in that context held that application under Section 11 of the Act of 1996 is not applicable. The Hon'ble Supreme Court was not dealing with a situation where the land owners were seeking enforcement of the award passed by the Arbitrator. Hence, the aforesaid judgment does not help the petitioners.

11. Once the petitioners have an equally efficacious alternative remedy before the District Court, it would not be appropriate to enforce the award of the Arbitrator by filing a writ petition under Article 226 of the Constitution of India. The writ jurisdiction of the High Court is a

discretionary jurisdiction. It is well settled that the writ Court ordinarily should not exercise its writ jurisdiction in case effective alternative remedy is available. Still further, the dispute with regard to the calculation of the appropriate amount of compensation which now includes solatium and interest shall be required to be calculated and determined. Hence, the District Court shall be the appropriate court.

12 No doubt, a Co-ordinate Bench has issued notice of motion in a similar writ petition, however, there is no final decision. From the reading of the order issuing notice of motion, it is apparent that the attention of the Court has not been drawn to Section 36 of the Act of 1996, which becomes applicable in view of the provisions of sub-section 6 of Section 3G of the Act. Hence, the order issuing notice of motion with greatest respect is distinguishable. Further, the execution petition before the District Court is neither lengthy nor time consuming.

13. Hence, the petitioners are relegated to the alternative remedy.

14. Disposed of.

15. All the pending miscellaneous applications, if any, also stand disposed of.

14.07.2021
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No