IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14297 of 2021 (O&M)
Date of decision: 12.08.2021

Mahender and ors. ..Petitioners

Versus

Union of India and ors. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. RS Mamli, Advocate for the petitioners.

Mr. Abhilaksh Gaind, Advocate for respondent No.1 to 3.

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ANIL KSHETARPAL, J

The petitioners claim that their land described in para 3 of the writ petition has been compulsorily acquired by the Central Government in exercise of powers conferred by the National Highways Act, 1956, (in short '1956 Act') vide an award passed by the competent authority on 23.01.2015. It is claimed that 30% solatium on the market value of the land acquired determined by the competent authority has been paid. They claim that since the award has been passed after the enforcement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, therefore, the competent authority has erred in directing payment of 30% solatium in place of one hundred percent. They also claim that the Arbitrator while deciding cases filed by other identically situated owners, has already directed payment of one hundred percent solatium vide award dated 20.10.2018.

Sh. Abhilaksh Gaind, Advocate, has filed a brief note in response to the writ petition, which is taken on record.

It is not in dispute that the acquiring authority is required to pay one hundred percent solatium amount on the market value determined by the competent authority or Land Acquisition Collector as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'RFCTLARR Act') which has been made applicable to the acquisitions made under the National Highways Act, 1956, (in short 'the 1956 Act') with respect to assessment of the market value and payment of statutory benefits including solatium and interest on the awards passed by the competent authority under the later Act on or after 01.01.2015. It is also not disputed that certain identically situated owners, who had sought re-determination of the compensation before the Arbitrator, have been paid one hundred percent solatium amount as per the 2013 Act.

Before proceeding further, it would be appropriate to note certain provisions of the 1956 Act. Previously, the acquisition of the land for constructing/laying National Highways was governed by the Land

Acquisition Act, 1894 (hereinafter referred as 'the 1894 Act'). By Act No.16 of 1997, the Central Government added provisions for acquisition of land in the 1956 Act. In Section 3G of the 1956 Act, the provision has been made for payment of the amount determined by the competent authority. Under Section 3G(5), either of the parties are entitled to question the correctness of the amount determined by the competent authority by seeking re-determination by the Arbitrator to be appointed by the Central Government. In Section 3H, the procedure for deposit and payment of the amount, so determined, has been laid.

In **Golden Iron Vs. Union of India, 2011 (4) RCR (Civil) 375**, a Division Bench of the Court held that market value of the land determined by the competent authority shall be payable along with interest and solatium amount as provided under the 1894 Act, even with respect to the acquisition of land under the 1956 Act. Recently, the Hon'ble Supreme Court in **Union of India Vs. Tarsem Singh and others, (2019) 9 SCC 304** has also held that there is no justification in denying the benefits of solatium amount and interest to the land owners for compulsory acquisition of the land under the 1956 Act. The 1894 Act, has been replaced with the RFCTLARR Act, 2013, which came into force w.e.f. 01.01.2014. Section 24 (1)(a) of the RFCTLARR Act provides that where no award under Section 11 of the 1894 Act, has been made, then, all the provisions of RFCTLARR Act, 2013 relating to determination of compensation shall apply. Section 30 provides that the Collector shall pay solatium amount equivalent to one hundred percent of the compensation amount. Previously, under the 1894 Act, the solatium was payable @ 30%. Furthermore, Section 80 of RFCTLARR Act, 2013 provides that if the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall be required to pay the amount awarded with interest thereon @ 9% per annum from the time of so taking possession until it has been paid or deposited. If the delay in the payment of compensation or any part thereof is for a period of more than one year from the date of taking possession, the interest @ 15% per annum shall be payable from the date of expiry of the said one year. In Section 105, it was provided that provisions of the 2013 Act will not apply to certain cases or will apply with certain modifications. As per the 4th Schedule of the RFCTLARR Act, 2013, the 1956 Act, is enlisted at item No.7 amongst the list of enactments regulating land acquisition, rehabilitation and resettlement. In view of the aforesaid fact, the Central Government vide Ordinance No.4 of 2015 substituted Section 105(3) of RFCTLARR Act, 2013. Since the ordinance was to lapse on 31.08.2015, therefore, the Government vide notification dated 28.08.2015 issued under the RFCTLARR (removal of difficulties) Order 2015, made a provision that the provisions of 2013 Act relating to determination of compensation in accordance with the 1st

Schedule, rehabilitation and resettlement in accordance with the 2nd Schedule and infrastructure and amenities in accordance with the 3rd Schedule, shall apply to all the land acquisition cases under the enactments specified in the 4th Schedule to the said Act. The learned Attorney General for India vide a written opinion dated 23.12.2015 opined that such ordinance followed by the RFCTLARR (removal of difficulties) Order 2015 would be applicable to all acquisitions w.e.f. 01.01.2015. In the aforesaid opinion itself, it was also opined that the competent authority shall also award solatium amount equivalent to one hundred percent of the compensation amount. Moreover, the Ministry of Road Transport and Highways vide communication dated 13.01.2016 also clarified that in cases initiated under the 1956 Act, wherever the award had not been announced till 31.12.2014, the provisions of the RFCTLARR Act, 2013 shall apply.

In the present case, the petitioners are sought to be denied the payment of solatium amount equivalent to one hundred percent of the compensation amount on the ground that they did not apply for redetermination of the compensation in accordance with sub section 5 of Section 3G of the 1956 Act which is extracted as under:-

> 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.
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> (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.
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> (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.
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> (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.
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> (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.]

On careful reading of the provision, it is apparent that if either of the parties is not satisfied with the amount determined by the competent authority, then on an application, the dispute shall be determined by the Arbitrator to be appointed by the Central Government. In the present case, the question is not with regard to amount assessed/determined by the competent authority. In the present case, the dispute is only with regard to payment of statutory benefits for compulsory acquisition of the land which is not separable from the market value of the acquired land. The petitioners are not claiming redetermination of the amount in accordance with the award passed by the Arbitrator. They are only praying for direction to pay the solatium amount equivalent to one hundred percent of the compensation as provided under Section 30 of the RFCTLARR Act, 2013. They also pray for payment of interest in accordance with Section 80 on the unpaid amount. In the brief note, the petition is sought to be opposed on the ground that since the petitioners have failed to seek redetermination under Section 3G(5) of 1956 Act, therefore, the petitioners may be relegated to the remedy before the Arbitrator. As already noticed, the Arbitrator is not required to be appointed only for determination of the amount of statutory benefits. No doubt, if the dispute comes before the Arbitrator for redetermination of the amount determined under sub section 1 or 2 of Section 3G of the 1956 Act, then, the Arbitrator can proceed to decide the entitlement with regard to statutory benefits, however, in any other eventuality, where the land owners do not dispute the correctness of the market value determined by the competent authority under sub section 1 or 2 of Section 3G of the 1956 Act, then, they cannot be forced to apply for appointment of Arbitrator only for the purpose of payment of the amount of statutory benefits. The solatium amount is paid on account of compulsory acquisition of the land. This compensation is paid by the government for involuntary taking over the land of an owner. Such power of the government is in accordance with the doctrine of 'Eminent Domain'. In **Tarsem Singh (supra),** the Hon'ble Supreme Court has already held that while granting the compensation under the National Highways Act, 1956, the provisions of the Land Acquisition Act, 1894, which now stand substituted by RFCTLARR Act, 2013, shall be applicable. In view thereof, the objection of the respondent-UOI that the petitioners should be relegated to the alternative remedy before the Arbitrator does not deserve acceptance. It may be noted here that in a case arising on an application filed under Section 28-A of Land Acquisition Act, 1894, the Supreme Court in **Union of India Vs. Pushpavadhi and ors., (2018) 3 SCC 28** held that the Writ Court is competent to order payment of the statutory interest. In that case, the application under Section 28-A of the 1894 Act was allowed by the Land Acquisition Collector but the amount was ordered to be paid without interest. The Hon'ble Supreme Court held that since the land owners do not have any alternative remedy, therefore, the Writ Court can pass an order directing the respondents to pay the statutory interest.

Keeping in view the aforesaid discussion, the writ is allowed and the respondents are directed to pay solatium amount equivalent to one hundred percent of the compensation amount determined by the competent authority under sub section (1) and (2) of Section 3G of the 1956 Act after adjusting the amount already paid. The respondents shall also pay the amount with interest in accordance with Section 80 of the 2013 Act. Let the respondents pay the amount to the petitioners within two months.

With these observations, the writ petition is allowed.

12.08.2021 **(ANIL KSHETARPAL)**
ashok **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No