

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 4948 of 2019

Indian Sucrose Limited

... Petitioner(s)

Versus

Union of India and Others

... Respondent(s)

AND

2. Civil Writ Petition No. 20816 of 2021(O&M)

Indian Sucrose Limited

... Petitioner(s)

Versus

Union of India and Others

... Respondent(s)

DATE OF DECISION: 23.09.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Akshay Bhan, Senior Advocate
with Mr. Aman Bansal and Mr. Rohit Nagpal,
Advocates, for the petitioner(s) (In CWP-4948-2019).

Mr. Kanwaljit Singh, Senior Advocate
with Mr. Jagvinder Singh Santwal, Advocate
for the petitioner(s) (In CWP-20816-2021).

Mr. Sandeep Chopra, Deputy Advocate General, Punjab,
for the respondent No.2, 4 and 5 (In both the writ petitions).

Mr. Mahender Joshi, Advocate
for Mr. R.S.Madan, Advocate
for the respondent No.3 (In CWP-4948-2019).

Mr. Rakesh Roy, Advocate
for Mr. Abhilaksh Gaind, Advocate
for the respondent No.1 and 3 (In CWP-20816-2021).

Mr. Navjot Singh, Advocate
for the respondent No.6 (In CWP-20816-2021).

Mr. Satbir Rathore, Advocate
for the respondent No.7 (In both the writ petitions).

Mr. Nitin Ahluwalia, Advocate
for the respondent No.8 (In CWP-20816-2021).

Mr. Rajender Hooda, Advocate
for the respondent No.9 (In CWP-20816-2021).

Anil Kshetarpal, J.

1. These two connected writ petitions shall stand disposed of by a common order. The parties, through the learned counsel representing them, are *ad idem* that these writ petitions can conveniently be disposed of by a common order.

2. Some facts are required to be noticed. While mortgaging the land of the company, M/s Mukerian Paper Mill availed a loan from the Indian Financial Corporation of India (hereinafter referred to as “IFCI”). On account of default in repayment of the loan, M/s Asset Reconstruction Company India Limited was appointed as attorney on behalf of the IFCI to recover the loan amount. The proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, were initiated. The mortgaged assets were put to auction. The petitioner herein purchased the mortgaged assets including the land and machinery. The proceedings filed by the erstwhile management of M/s Mukerian Paper Mills Limited, challenging the auction, were not successful.

3. In order to expand the existing National Highway, some part of the land, which initially belonged to M/s Mukerian Paper Mills, was acquired. The dispute is with regard to entitlement of the compensation payable on account of compulsory acquisition of the land.

4. As per Section 3G of the National Highways Act, 1956 (hereinafter referred to as “the 1956 Act”), if any party is not satisfied with

the amount assessed by the Competent Authority, he/she is entitled to file an application to the Central Government for adjudication by the Arbitrator. Further, Section 3H of the 1956 Act provides that if several persons claim to be interested in the amount deposited or any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. Section 3G and 3H of the 1956 Act are 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.

3H. Deposit and payment of amount.—

(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) 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 under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.”

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-books.

6. On the one hand, the learned counsel representing the petitioner (the alleged subsequent purchaser) claims that the Arbitrator has no jurisdiction to pass an order in favour of M/s Mukerian Paper Mills or its previous management particularly when the matter was required to be decided by the Civil Court only as per Section 3H of the 1956 Act.

7. On the other hand, the learned counsel representing the respondent No.7 in Civil Writ Petition No. 4948 of 2019 submits that the order has been passed by the competent authority in one of the cases.

The final decision in such cases is required to be passed by the

Civil Court as per Section 3H (3 and 4) of the 1956 Act.

9. At this stage, the learned counsel representing the parties have come to a consensus. They jointly pray for referring the matter to the Principal Civil Court for adjudication of the claims of the respective parties.

10. Keeping in view the aforesaid consensus arrived at between the parties as also the Scheme of Section 3H of the 1956 Act, the matter is referred to the District and Sessions Judge, Hoshiarpur. The parties, through their respective counsels, are directed to appear before the Court of the District and Sessions Judge, Hoshiarpur, on 18.10.2022. The District and Sessions Judge will either decide the case himself or refer the matter to the senior Additional District and Sessions Judge, who is competent to decide the matter. Admittedly, some amount is lying with the competent authority. Let the competent authority forward the amount to the competent Court who will invest the same in the Fixed Deposit Receipts of a nationalized bank giving highest rate of interest. The parties shall be at liberty to file their pleadings before the competent Court. The competent Court is directed to make sincere endeavours for expeditious disposal of the case.

11. With the observations made above, both the writ petition are disposed of. The miscellaneous application(s) pending, if any, in both the writ petitions, shall also stand disposed of.

**(Anil Kshetarpal)
Judge**

September 23, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No