

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

**Civil Writ Petition No. 4575 of 2021 (O&M)
Reserved On: 09.10.2023
Pronounced On: 22.12.2023**

Sham Lal

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Dinesh Kumar, Advocate
for the petitioner.

Mr. D.K. Singal, Advocate
for respondent Nos. 2 & 3.

Mr. Sunil Kumar Sharma, Advocate
for respondent Nos. 1, 4 & 5.

HARKESH MANUJA, J.

By way of present writ petition, prayer has been made for issuing directions to respondents No 1 to 3 to get the inquiry of the matter done regarding changing of the nature of the land belonging to the petitioner and fixing of its market rate by respondent No. 5, at her own level, with further prayer that the valuation be got done from an independent agency as respondent No. 5 by doing so, has caused illegal gain to certain individuals and caused loss to the genuine claim of the petitioner.

[2] Briefly stated, facts of the case are that land of the petitioner including others was acquired by respondent No 1 for public purpose i.e. for building/widening two lane with paved shoulder / four laning etc., maintenance, management and operation of National Highway-148 B (NH-

148B), in the stretch of land from KM. 249.900 to 249.100, in the revenue estate of two villages i.e. Village Chotian (Hadbast No. 78) and Chural Kalan (Hadbast No. 81), Tehsil Leheragaga, District Sangrur. Notification under Section 3A (3) of the National Highways Act, 1956 (**hereinafter called as “the Act)”** was published on 15.07.2018, followed by notification under Section 3D (1) dated 18.06.2019 and subsequently award was passed on 23.12.2019 by respondent No. 5-Competent Authority Land Acquisition-cum-Sub Divisional Magistrate, Leheragaga, Tehsil Leheragaga, District Sangrur (**hereinafter to be referred as “CALA”**).

[3] In the present case, petitioner was concerned with the acquisition of land in Village Chural Kalan, wherein, petitioner had 181/2640 share in khasra numbers 95//4 (2-19) and 95//5 (8-1), which he and his brother Kamal Garg purchased from Gurvir Singh, Amarvir Singh sons of Manjit Singh and Harjit Kaur d/o Harsharan Singh vide registered sale deed No. 1503 dated 12.03.2004. It was submitted by the petitioner that in the sale deed, it was specifically mentioned that the vendors sold Eastern side of khasra number 95//4min, which was adjoining to the khasra number 95//5.

[4] Grievance of the petitioner is that respondent No. 5-CALA, while assessing the compensation, vide award dated 23.12.2019, fixed the rate of khasra numbers 95//3 and 4 @ Rs. 64,705/- per marla, while those of adjoining khasra numbers especially of 95//5 rate was fixed @ Rs.13,125/- per marla, which was wholly arbitrary and discriminatory.

[5] Earlier, petitioner filed CWP No. 17681 of 2020, but, the same was dismissed as withdrawn vide order dated 27.10.2020 (**Annexure P-3**) with liberty to approach the competent authority. Thereafter, petitioner

served representation dated 04.12.2020 (**Annexure P-4**) through registered post, and respondent No. 3, despite having received the same, did not take any action or decision thereupon, compelling the petitioner to file the present writ petition.

[6] In present case, vide order dated 26.02.2021, this Court directed respondent No. 3 to pass an administrative order on pending representation and it was further directed that order so passed be placed on the record of the Court file. Short reply dated 19.05.2022 filed by respondent No.3 is on record.

[7] Learned counsel for the petitioner submitted that the land falling in khasra number 95//5 was of similar nature as like of khasra numbers 95//3 and 4 and the same also abutted the main Jakhal – Barata road besides being near the Jakhal Town and thus, there was no difference in the nature of land of khasra numbers 95//4 and 95//5 which was also apparent from the perusal of Aksh Latha/Map (**Annexure P-1**). He further submitted that it was not possible that there could be such a huge difference in the value of the adjoining lands especially of same rectangle number and thus, the action of respondent No. 5-CALA was in clear violation of Article 14 of the Constitution of India.

[8] On the other hand, learned counsel for Union of India (respondent Nos. 1, 4 & 5) as well as learned counsel for NHAI (respondent Nos. 2 & 3) submitted that as specified in their reply, in view of Section 3G(5) of the Act, petitioner was having alternative remedy of invoking arbitration and hence, the writ petition was not maintainable. Learned counsel even referred to Section 3G(5) of the Act, which is reproduced below:

“ (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.”

[9] In view of the remedy available to the petitioner under the aforementioned clause, learned counsels further submitted that by way of present writ petition, petitioner short-circuited the remedy available to him under law, which was not permissible.

[10] I have heard learned counsel for parties and gone through the paper-book and I find some substance in the arguments raised by the learned counsel for the petitioner.

[11] In Table No. 1 of the award dated 23.12.2019, land falling in both Khasra numbers i.e. 95//4 and 95 //5 were shown as agricultural land. Even while describing the land of Village Chural Kalan, for both the Khasra numbers, it was recorded that the same fall near main road. However, while assessing the rate of land, findings *qua* both the khasra numbers were exactly opposite.

[12] With respect to khasra number 95//4 (including 95//3 and 95//7 as well) after observing that it abutted the main Jakhal Barata road and was near the Jakhal town, besides taking into consideration the location as well as the built up area in these lands, its value was assessed as Gair Mumkin residential @ Rs. 2139/- per square yard (or Rs. 64,705/- per marla). Relevant extract of the award dated 23.12.2019 is reproduced hereunder:

“ Gair mumkin of specific khasra Nos. (Other than above Khasra nos.)

After spot inspection and after perusal of concerned revenue record, it is observed that land to be acquired from

khasra nos. 95//3, 4, 7 abut the main Jakhal Barata road and is near to Jakhal town. There is built up area present in the land to be acquired of these khasra nos. but the concerned land owners of these khasra nos. failed to produce any CLU certificate etc. regarding there claim. But keeping in mind these aspects about the location and built up area included, the land to be acquired from khasra nos. 95//3,4,7 is declared as gair mumkin residential. Hence, keeping in view Section 26 of RFCTLARR Act, 2013, it has been decided to fix the Basic Market Value of land under acquisition in khasra nos. 95//3, 4, 7 in Village Chural kalan for Gair mumkin residential as 2139/- per Sq yard.”

[13] On the other hand, with respect to khasra number 95//5, it was recorded that there was no development or any infrastructure available thereupon like streets, parks, plotting etc. and also, neither there was any other type of construction like houses, shop etc. and therefore, it was not considered as residential area and its value was assessed @ Rs. 21,00,000 per acre (or Rs. 13,125/- per marla).

“ Nehri/chahi of specific khasra Nos. (Other than above Khasra nos.)

Land of Khasra nos. 94//1,2,8,9/1,9/2, 10/95//5 under acquisition has been included in Serial no. A-52 of Collector rates list and separate Collector rates have been fixed for these khasra nos. but during spot inspection done on 10.12.2019, it has been observed that there is no development or any infrastructure available like street, parks, plotting etc. that is necessary for residential colony. Also there is no any type of construction like houses, shops etc. on the land of these khasra nos. The land owners of these khasra nos. have also Failed to produce any documentary evidence in this regard from which it can be deduced that these are a part of a residential colony. So for these khasra nos. Market Value calculated for residential

type of land cannot be granted. But because there are separate collector rate fixed for these khasra nos, some of the sale deeds might have been registered with these higher collector rates.

Hence, keeping in mind these aspects and provisions of section 28 of RFCTLARR Act, 2013, it has been decided to fix the Basic Market Value of land under acquisition of khasra nos. 94//1, 2, 8, 9/1, 9/2, 10 & 95//5 of village Chural Kalan is fixed as 21,00,000/- per acre. ”

[14] A perusal of Aksh Latha/Map (**Annexure P-1**) would show that both the khasra numbers were immediately adjoining, the acquired land in khasra No. 95//5 comprised in the west, immediately attached to the land acquired in khasra number 95//4. Both these Khasra numbers belong to immediately adjoining land; abutting the main Jakhal-Barata road being near to Jakhal town. In these circumstances, it was not discernible that on what account there was such a huge difference in the assessment of compensation, which was apparently arbitrary.

[15] Even learned counsel(s) for the respondents, neither in the affidavits filed response, nor were during arguments able to point out any difference in the nature or location of the land of the petitioner falling in khasra number 95//5, in comparison to land falling in khasra number 95//4, so as to show that on what account compensation for the same was calculated at a much lesser rate. Though, merely on this ground, an enquiry cannot be ordered in the absence of any *mala fide* intentions being apparent from the records, yet at the same time, petitioner cannot also be made to wait for arbitration proceedings to conclude for the correct assessment of his land as in the present case; the assessment apparently being discriminatory in nature, rather than thus being a simple error in the assessment of

compensation. It is further clarified that under ordinary circumstances, this Court would have definitely directed the petitioner to pursue his remedy before the Arbitrator, however, this Court is exercising its power of Judicial review under Article 226 of the Constitution of India and entertained the cause of petitioner only for the reason that in the peculiar facts of the case, discrimination is writ large while assessing the compensation for the adjoining lands.

[16] Accordingly, present writ petition is **disposed off** with a direction to re-assess the compensation with respect to the land of petitioner falling in khasra number 95//5 within a period of two months, after taking into consideration all material facts including its locational proximity with khasra No. 95//4. It is further directed that in case respondent No. 5 reaches on the conclusion that compensation for land falling in khasra No. 95//5 shall remain same, then clear reasoning be provided in its award being based on relevant documents, on the basis of which, such conclusion is being made.

[17] Pending miscellaneous application(s), if any, shall also stand disposed off.

December 22, 2023
'sanjay / dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No