

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH.

CWP-8730-2022 (O & M)

Reserved on: 04.10.2023

Pronounced on: 18.10.2023

NATIONAL HIGHWAYS AUTHORITY OF INDIA AND ANR.

.....Petitioners

Versus

STATE OF PUNJAB AND ORS.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR**  
**HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Chetan Mittal, Sr. Advocate with  
Mr. R.S.Madaan, Advocate  
for the petitioners.

Mr. Aman Pal, Addl. A.G., Punjab with  
Ms. Monika Jalota, Sr. DAG, Punjab and  
Mr. Maninder Singh, DAG, Punjab.

Mr. Gautam Pathania, Advocate  
for respondent No. 4.

Mr. Shreenath A. Khemka, Advocate  
for respondent No. 5.

Mr. Satya Pal Jain, Addl. Solicitor General of India with  
Mr. Dheeraj Jain, Senior Counsel, UOI  
for respondent No. 6.

Mr. Pradeep Attri, Project Director, PIU, Chd. in person.

Mr. Rajesh Chaudhary, Deputy Secretary, MoRT&H,  
Govt. of India, in person.

K.A.P. Sinha, FCR (Punjab)-cum-Secretary (Revenue)  
Punjab in person.

Mr. Ankur Mittal, Addl. A.G., Haryana with  
Mr. Saurabh Mago, DAG, Haryana  
Mr. P.P.Chahar, Sr. DAG, Haryana and  
Ms. Kushaldeep Kaur Manchanda, Advocate.

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**SURESHWAR THAKUR, J.**

1. Through the instant writ petition, the present petitioners,

have prayed for the making a writ of mandamus upon co-respondents No. 1 and 2, to enable and investigate with regard to the passing of awards (Annexure P-5), on the ground that they were ante dated.

2. An additional relief is also asked in the writ petition for the said awards being declared to be void and non-est.

3. The relief (supra) become mitigated. The reason for making the said inference, is comprised in the order made by this Court on November 16, 2022, order whereof speaks that awards in some of the cases have already been passed and that some more time was required to complete the proceedings with respect to the pending cases. Moreover, when it is also been stated at the bar, by the learned counsel for the petitioners, that disciplinary proceedings, have been drawn against the derelicting officers/officials concerned, thereby the writ relief relating to a probe being ordered into the officers concerned making ante dated awards, rather becomes also alleviated.

4. Be that as it may, since this Court had through an order made on 31.08.2023, relevant paragraph(s) whereof, becomes extracted hereinafter, had noticed therein the ill effects of gross and inordinate delays, on the part of the authority(ies) concerned, to draw appropriate action, in accordance with law, in respect of the acquired lands. Therefore, for overcoming the said delays which ultimately result, in the land losers concerned, becoming deprived of the benefit of the compensation amount. Resultantly inputs were elicited from all concerned.

*“4. Since it is stated at the bar by the learned counsel appearing for the petitioner- NHAI, and, also by the learned Additional Advocate General, Haryana, who*

*though is not impleaded as a party in the instant writ petition, that there are gross inordinate delays on the part of the authority(ies) concerned to draw the appropriate actions in accordance with law, in respect of the acquired lands, therefore for ensuring that the land looser(s) concerned are not, on account of the said delays, deprived of the benefit of the compensation amount. Therefore, the Additional Chief Secretary (Revenue) to the Government of Punjab, and, also the Additional Chief Secretary (Revenue) to the Government of Haryana, are requested to cause their respective personal appearances before this Court, so that the above menace can be curbed in future.*

*5. Moreover, the Regional Officer concerned of the NHAI, who is Incharge in respect of undertaking of projects concerned, in the respective States of Punjab and Haryana, is also requested to make his personal appearance before this Court, on the subsequent date of hearing.*

*6. Mr. Satya Pal Jain, Addl. Solicitor General of India, who is not today available, is also requested to ensure, that on the subsequent date of hearing, the Deputy Secretary, Department of Road, Transport and Highways, also remains present in Court for assisting this Court, in resolving the issue with respect to the expeditious decisions being made on the subjudice matters for enhancement of compensation.”*

5. The said inputs have been purveyed to this Court. Though the definition of competent authority, as occurs in Section 3(a) of the National Highways Act, 1956 (hereinafter for short called as 'Act of 1956'), provisions whereof are extracted hereinafter, defines 'competent authority' to be any person or authority authorized by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority, for such area as may be specified

in the notification. Though, in terms thereof, officers on the cadre respectively of the State of Haryana and the State of Punjab, do become notified, by the Central Government to be the 'Competent Authority', thus for the relevant statutory purpose, as mentioned in the 'Act of 1956'.

**[3. Definitions.--***In this Act, unless the context otherwise requires,--*

*(a) "**competent authority**" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;*

*(b) xxxx*

6. Nonetheless, since the hereinafter problems, yet beset the National Highways Authority of India (hereinafter for short called as the 'NHAI'), inasmuch as, abysmal wants qua makings of expeditious awards thus by the said officers, thereby does also result in delays being caused in determination(s) besides disbursement(s) of compensation, vis-a-vis the land losers concerned. Therefore, it is but imperative to apart from the above, thus delineate the other hurdles faced by the NHAI, relating to expeditious possession of the acquired lands becoming delivered to it, besides relating to the creations of a viable mechanism, rather for streamlining besides activating the officers concerned, who are assigned the functions of 'competent authority', through apposite notification(s) being issued by the Government of India.

7. Initially the difficulties which beset the NHAI are :

The NHAI which is engaged in pilot projects of national

importance in the State of Punjab rather not receiving adequate co-operation from the State agencies, thus in assuming physical possession of the acquired lands. The prompt delivery of physical possession of the acquired lands but free from all encumbrances, to the NHAI, naturally facilitates the quickest and rapid execution of pilot projects of national importance. On the other hand, tardy and slothful delivery of physical possession of the acquired lands by the State agencies, to the NHAI, naturally impedes the execution of projects of national importance.

8. The counsel appearing for the NHAI, has highlighted, that despite compensation becoming deposited in terms of Section 3E of the 'Act of 1956', yet there being impediments in delivery of encumbrance free possession to it. Thereby despite a '*State Support Agreement*' becoming executed inter-se the NHAI and the Government of Punjab and thereins occurring a covenant, obliging the rendition of police assistance, by the State agencies to the concessionaire, for ensuring removal of trespassers from the acquired lands, yet the said covenant becoming breached, thereby resultantly the quickest encumbrance free possession of the acquired lands, thus for facilitating the expeditious execution of the pilot projects of national importance, rather becomes forestalled.

9. Therefore, as asked for, a **mandamus** is made upon the Director General of Police of the State of Punjab, to ensure that, as and when police assistance is asked for, by the NHAI for delivery to it, of encumbrance free possession, from the land-losers concerned, especially when prior thereto, compensation in terms of relevant provision becomes determined, to thereby make the promptest compliance thereto.

10. The DGP, Punjab shall also receive inputs from the police officials concerned, and in case there is yet delay in the purveyings of the said asked for assistance to the NHAI, to draw such actions as deemed fit in accordance with law, against the derelicting police officials concerned. The above would be in tandem with the provisions of Section 3E of the 'Act of 1956', provisions whereof are extracted hereinafter.

***[3E. Power to take possession.--(1) Where any land has vested in the Central Government under sub-section(2)of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.***

***(2)If any person refuses or fails to comply with any direction made under sub-section(1), the competent authority shall apply--***

***(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;***

***(b) in case of any land situated in any area other than the area referred to in clause(a), to the Collector of a District,***

***and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.]***

11. Be that as it may, the competent authority, is to likewise showing promptness and alacrity in complying with the mandate (supra), but it appears that the competent authority, who are the encadred State officers, thus appointed, under a notification issued by the Government of India, are apathetic, to the necessity of rapid delivery of encumbrance free possession to the NHAI, thereby projects of national importance become forestalled.

12. Therefore, a **mandamus** is made upon the 'competent authority' to with alacrity thus comply with the statutory mandate, enshrined in the relevant statutory provision (supra), inasmuch as, the competent authority shall on the requisite compliances being made by the NHAI, shall ensure further compliance qua within a week thereafter, a notice in writing being served upon the land-loser concerned and/or any other person in possession thereof, thereby asking the above to surrender possession within 60 days of service of notice.

13. Moreover, in case the above notice remains un-complied with rather at the instance of the noticee concerned, thereupon a **mandamus** is issued, upon the competent authority to within a week thereafter, seek police assistance, as mentioned in sub section (2) of Section 3 E of the 'Act of 1956'. In case there is breach of the said request as made by the competent authority, to the Commissioner or to the Collector concerned, thereby it is open to the NHAI, to move the Chief Secretary to the Governments concerned, so that, the latters thus draw appropriate action in accordance with law, against the derelicting officer/official concerned.

14. The NHAI has already spent a sum of Rs. 13000 crores in the State of Punjab owing to construction of various projects. However,

the projects concerned (namely Delhi-Katra Expressway, Ludhiana-Rupnagar to Kharar Highway, Ludhiana-Bathinda Highways) rather remain un-executed, owing to non-delivery of possession of the acquired lands to the NHAI. Therefore, in respect of the enlisted projects, list whereof shall be supplied within a week by the counsel for the NHAI, to the respondent concerned, thereupon thus the Chief Secretary to the Government of Punjab, shall within a week from receiving the said list, thereby **direct** the competent authority, to draw action in terms of Section 3E of the 'Act of 1956', and, subsequently the Chief Secretary to the Government concerned, shall thereafter, ensure that within a period of two months thereafter, rather encumbrance free possession of the enlisted projects, is delivered to the NHAI, thus for enabling it to expeditiously complete the pilot projects of national importance.

15. The learned counsel for the NHAI has also projected before this Court, that exorbitant sums of compensation amount, become determined by the Competent Authority, under Section 3(g)(5) of the 'Act of 1956', by the Arbitrators in the State of Punjab. Though, the said projection may not at this stage, be well rested on sound evidence, but yet if it has been made, thereby the practice of making exorbitant and excessive sums of compensation, by the 'competent authority', whether in the State of Haryana or in the State of Punjab, thus is to be curbed.

16. Be that as it may, the statutory remedy of arbitration as contemplated in Section 3(g)(5) of the 'Act of 1956' provisions whereof become extracted hereinafter, to the considered mind, of this

**[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--

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17. The reason for making the above conclusion, stems from the factum, that though the statutory provision of arbitration (supra) as encapsulated in the ‘Act of 1956’, thus thereby invites the application of the Arbitration and Conciliation Act, 1996 (hereinafter for short called as the ‘Act of 1996’), relevant provisions whereof become extracted hereinafter.

*34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*

*(2) An arbitral award may be set aside by the Court only if — (a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—*

*(i) a party was under some incapacity, or*

*(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*

*(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*

*(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*

*Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*

*(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or*

*(b) the Court finds that— (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*

*(ii) the arbitral award is in conflict with the public policy of India.*

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18. However, an incisive reading of the said provision, reveals that, an extremely limited ground of challenge to the award, as, made by the competent authority, thus is assigned in the Arbitrators concerned. Moreover, the District Judge, who may be motioned subsequent to the makings of the award by the Arbitrator, is rather invested with a limited jurisdiction, to set aside the award, but yet he is not conferred with the jurisdiction to modify the award, as made previously by the competent authority. The investment of limited jurisdictions rather in both the Arbitrator and subsequently in the District Judge, thus thereby prolong the settlement of compensation vis-à-vis the land-losers concerned, thereby causing an exacerbated agony both to the land-losers concerned, and to the acquiring authority concerned.

19. In addition, the substratum of any arbitration proceeding(s), for thus becoming validly entered into by an Arbitrator, rather is founded in a validly drawn arbitration agreement, wherein, occurs an arbitration clause. However, yet through a statutory fiat, an

1956', but it appears that the above occurring provision, is completely shorn of the dire legal necessity, of their imperatively being an Arbitration agreement, between the land-loser and the acquiring authority, and, thereins occurring an arbitration clause, whereby alone on the said sine-qua-none becoming accomplished, thus the arbitration mechanism, as contemplated in the 'Act of 1996', can become well facilitated.

20. Moreover, the Hon'ble Supreme Court, in a verdict rendered in case titled as 'Project Director, National Highways Vs. M. Hakeem and Another 2021 (9) SCC 1', has held that ***in exercise of power under Section 34 of the 'Act of 1996', the District Judge has no power to either modify or vary the award passed by the Arbitrator and it can only set aside the award and sent back the matter for fresh adjudication.***

21. Therefore, the incorporation of a provision relating to the arbitration (Supra) in the 'Act of 1956', prima facie, appears to be arbitrary and as such antithetical to the principles, thus underlining the entering, upon, a valid arbitration by the arbitrator concerned. Therefore, the said provision (Section 3 G (5) of the 'Act of 1956'), is recommended to be repealed by the Union Parliament.

22. Moreover, the necessity of dispensing with the said provision, stems from the factum that the provision of Section 29 A (4) of the 'Act of 1996', which are applicable, vis-à-vis, arbitration proceedings, make speakings that the mandate of the arbitrator, would terminate, if the award is not made within a period of 12 months, from the date of completion of pleadings, under sub section (4) of Section 23

unless further extension is granted by the Court. In practice, the above provision, does ultimately lead the defeated litigant, thus to resort the above technicality, for thereby ensuring that the award be declared null and void. Resultantly, the sufferer may be either the land-loser concerned or the acquiring authority concerned. The above snag or hurdle would become curbed in case as stated (supra), the provision (supra) occurring in the 'Act of 1956' is repealed by the Union Parliament.

23. Now making a comparative study of the provisions relating to the determination(s) of enhanced compensation, respectively under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short refer to as the 'Act of 2013'), and, the 'Act of 1956', thereby the hereinafter inferences besides anomalies thus do evidently emerge.

24. The provision of Section 69 occurring in the 'Act of 2013', provisions whereof are extracted hereinafter, enshrine those parameters which the authority is required to be revering while determining compensation.

**69. Determination of award by authority.**—(1) *In determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under section 26 to section 30 and the provisions under Chapter V of this Act.*

(2) *In addition to the market value of the land, as above provided, the Authority shall in every case award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing*

*on and from the date of the publication of the preliminary notification under section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.*

*Explanation.—In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.*

*(3) In addition to the market value of the land as above provided, the Authority shall in every case award a solatium of one hundred per cent. over the total compensation amount.*

25. A reading of the said provisions reveals, that they are in terms of the provisions relating to assessment of compensation, as are carried in the repealed Land Acquisition Act, 1894. Therefore, on adherences being made to the said statutory parameters, thus by the assessing authority, thereby, there is a very minimal scope and possibility of exorbitant or excessive sums of compensation becoming determined. Furthermore, it also appears that the said statutory parameters, do but ensure the determination of just, fair and reasonable compensation to the land loser concerned, but free from any vices of excessive or exorbitant sums of compensation, being determined qua them, vis-a-vis, the acquired lands.

26. On the other hand the provisions relating to the determination of compensation under the 'Act of 1956' as carried in Section 3G of the 'Act of 1956', provisions whereof have been extracted above, do not in complete tandem therewith, thus create a regulatory mechanism rather for determination of fair, just and reasonable compensation by the competent authority, vis-a-vis, the land losers

concerned. Resultantly much scope is left for exorbitant and excessive sums of compensation becoming determined.

27. However, the above situation can be remedied in case instead of the Government of India, notifying the encadred officers in the States of Punjab or in the State of Haryana, as 'competent authorities' rather the Government of India appoints officers, on its cadre, thus to function as the 'competent authority', rather for making determination(s) of fair and just compensation, but bearing in mind the guidelines, as contained in the repealed 'Act of 1894' besides the expostulations of law in respect whereof, as carried in verdicts recorded by the Courts of Law. The adherences to the (supra) may definitely ensure the ebbings of the pernicious practice of exorbitant sums of compensation becoming determined besides would curtail the concomitant agony, arising from unending, unsettled rather for an elongated duration to time, thus determination(s) of just, fair and reasonable compensation amounts vis-a-vis the land-loser concerned or qua the acquiring authority.

28. Furthermore, the remedy of arbitration, as envisaged in Section 3G (5) and (6) of the 'Act of 1956', vis-à-vis, the remedy envisaged in Section 64 of the 'Act of 2013', provisions whereof become extracted hereinafter, is not co-equal to the remedy envisaged in Section 64 of the 'Act of 2013'.

***3G. Determination of amount payable as compensation.***

*(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.*

**(provision of Section 64 in the 'Act of 2013')**

**64. Reference to Authority.**—(1) *Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:*

*Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:*

*Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.*

*(2) The application shall state the grounds on which objection to the award is taken:*

*Provided that every such application shall be made—*

*(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;*

*(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire:*

*Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was*

*sufficient cause for not filing it within the period specified in the first proviso.*

29. It appears that reiteratedly for reason (supra), an ill advised remedy of arbitration is prescribed under the 'Act of 1956', thus respectively to the land-loser concerned, and, to the aggrieved acquiring authority concerned.

30. On the other hand, the remedy of enhanced compensation as contemplated in Sections 64, 69, 70 (2) of the 'Act of 2013', is in alignment, with the provisions of Section 18 of the repealed 'Act of 1894', inasmuch as, the jurisdiction to make enhancement of compensation, thus is conferred in a judicial body/Courts of Law, manned by skilled and trained judicial minds, who objectively, unlike the arbitrator, rather make fair reasonable and just determination of compensation. Therefore, too, the remedy of arbitration contemplated in the 'Act of 1956', as a measure of recourse to the aggrieved, from the award made by the competent authority, is, prima facie, an unsuitable and unviable remedy, thus either to the aggrieved land-loser or to the aggrieved acquiring authority concerned. Therefore, too, the said provision is required to be repealed, and is required to be replaced with provision(s) alike the one as carried in the 'Act of 2013', as relate to the enhancement of compensation or otherwise, thus, for recourses theretos being made rather respectively by the land loser concerned and by the acquiring authority.

31. Be that as it may, since both the statutes (supra) relate to acquisition(s) of lands, but yet contradistinct provisions, as spoken (supra), are carried in both the relevant enactments. Since the land-losers concerned, and the acquiring authority concerned, are a class by

themselves. Therefore, in respect of the same class or classes, the enactments relating to acquisition(s) of land rather are to be carrying alike provisions. On the other hand, contrarily in the 'Act of 1956', the just non arbitrary provisions alike the one in the 'Act of 2013' are not carried thereins, despite the said Act also relating to a similar class and/or relating, to acquisition(s) of lands.

32. Significantly alike observation(s) are also made in a judgment rendered by the Hon'ble Apex Court in case titled as **M.Hakeem (supra)**, wherein, the hereinafter expostulations of law are made by the Hon'ble Apex Court.

*53. It can be seen from the aforesaid provisions that the speeding up of acquisition of land needed for national highways has been achieved. The challenge process to an award passed will, of necessity, take its own time, both under Section 3G of this Act as well as under the provisions of the Land Acquisition Act. This being the case, it is a little difficult to appreciate as to why the wholesome regime of appeals under the Land Acquisition Act has been replaced by a regime in which an award passed by an Arbitrator, who is not consensually appointed but appointed by the Central Government, can only be challenged not on merits, but on the limited grounds contained in Section 34 of the Arbitration Act, 1996.*

*54. There can be no doubt that differential compensation cannot be awarded on the ground that a different public purpose is sought to be achieved. Also, the legislature cannot say that, however laudable the public purpose and however important it is to expedite the process of land acquisition, differential compensation is to be paid depending upon the public purpose involved or the statute involved.*

55. *Take the case of a single owner of land who has two parcels of land adjacent to each other. One parcel of land abuts the national highway, whereas the other parcel of land is at some distance from the national highway. Can it be said that the land which abuts the national highway, and which is acquired under the National Highways Act, will yield a compensation much lesser than the adjacent land which is acquired under the Land Acquisition Act only because in the former case, an award is by a government servant which cannot be challenged on merits, as opposed to an award made under Part III of the Land Acquisition Act by the reference Court with two appeals in which the merits of the award can be gone into? There can be no doubt that discrimination would be writ large in such cases.*

57. ***Given the fact that the NH Amendment Act, 1997 has not been challenged before us, we refrain from saying anything more.*** Suffice it to say that, as has been held in *Taherakhatoon v. Salambin Mohammad*, (1999) 2 SCC 635 (at para 20), even after we declare the law and set aside the High Court judgment on law, we need not interfere with the judgment on facts, if the justice of the case does not require interference under Article 136 of the Constitution of India.

33. The said is also spoken in a judgment made by the Hon'ble Apex Court in case titled as '***Nagpur Improvement Trust Vs. Vithal Rao***', (1973) 1 SCC 500, the relevant paragraph whereof, is extracted hereinafter.

30. *It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts enables the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14.*

34. However, since in the said judgment(s) there occurs no speakings, thus declaring the provisions relating to arbitration, being ultra vires, yet the observations (supra) are required to be borne in mind by the Union Parliament, in its proceeding to hereafter, in its wisdom thus make suitable alignments with the non-arbitrary provisions as carried in the 'Act of 2013', than retaining the arbitrary and capricious provisions (supra) as become carried in the 'Act of 1956'.

**Final Order of this Court.**

35. The writ petition is disposed of with the hereafter direction(s) :

(i) A **mandamus** is made upon the Director General of Police of the State of Punjab, to ensure that, as and when police assistance is asked for, by the NHAI for delivery to it, of encumbrance free possession, from the land-losers concerned, especially when prior thereto, compensation in terms of the relevant provision (supra) becomes determined, to thereby make the promptest compliance thereto.

(ii) The DGP, Punjab shall also receive inputs from the police officials concerned, and in case there is yet delay in the purveyings of the said asked for assistance to the NHAI, to draw such actions as deemed fit in accordance with law, against the derelicting police officials concerned.

(iii) Further, a mandamus is made upon the 'competent authority' to with alacrity thus comply with the statutory mandate, enshrined in the relevant statutory provision (supra), inasmuch as, the competent authority shall on the requisite compliances being made by

the NHAI, shall ensure further compliance qua within a week

thereafter, a notice in writing being served upon the land-loser concerned and/or any other person in possession thereof, thus asking the above to surrender possession within 60 days of service of notice.

(iv) Moreover, in case the above notice remains un-complied with rather at the instance of the noticee concerned, thereupon a mandamus is issued, upon the competent authority to within a week thereafter, seek the police assistance, as mentioned in sub section (2) of Section 3 E of the 'Act of 1956'. In case there is breach of the said request as made by the competent authority, to the Commissioner or to the Collector concerned, thereby it is open to the NHAI, to move the Chief Secretary to the Governments concerned, so that, the latter thus draw appropriate action in accordance with law, against the derelicting officer/official concerned.

(v) In respect of the uncompleted/pending projects, list whereof shall be supplied within a week by the counsel for the NHAI, to the respondent concerned, thus the Chief Secretary to the Government of Punjab, shall within a week from receiving the said list, thereby direct the competent authority, to draw action in terms of the statutory provisions (supra), and, subsequently the Chief Secretary to the Government concerned, shall thereafter, ensure that within a period of two months thereafter, rather encumbrance free possession of the enlisted projects, is delivered to the NHAI, thus for enabling it to expeditiously complete the pilot projects of national importance.

(vi) Furthermore, thus the Union Parliament may in its wisdom make suitable alignments with the non-arbitrary provisions as carried in the 'Act of 2013', than retaining the arbitrary and capricious provisions (supra), as become carried in the 'Act of 1956'.

(vii) The NHAI shall ensure that the list of ante dated awards are purveyed to the Chief Secretaries to the Government of Haryana and Government of Punjab. After the said purveyings are made, suitable action be drawn, in accordance with law, against the errant officers/officials concerned. Moreover, subsequently the lawful awards, in accordance with law, be ensured to be expeditiously made by the 'competent authorities'. Moreover, in case in respect of the instant ante dated award, no fresh award is pronounced, thereupon, a fresh award in respect of the lands covered within the instant ante dated award be ensured to be expeditiously made within one month by the competent authority.

(viii) Subsequently, the awarded compensation be forthwith deposited by the NHAI and thereafter the Collector concerned shall ensure encumbrance free delivery of possession to the NHAI within one month thereafter but bearing in mind all the above made mandamus.

36. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)  
JUDGE

18.10.2023  
kavneet singh

(KULDEEP TIWARI)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No