

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

CWP-18826-2019 (O & M)
Date of Decision: 11.01.2023

Satwinder Pal Singh

.....Petitioner(s)

Versus

State of Punjab and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. APS Sandhu, Advocate,
for the petitioner.

Ms. Deepali Puri, Addl. A.G., Punjab.

Mr. R.S. Madan, Advocate,
and Mr. Mohinder Joshi, Advocate,
for NHAI.

G.S.SANDHAWALIA, J. (Oral)

The present writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ in the nature of mandamus directing respondent Nos.2 to 5 to restore the possession of the land in the ownership of the petitioner which was stated to be illegally and forcibly occupied by the said respondents. Resultantly, challenge to the notification dated 05.12.2017 (Annexure P-4) issued by the National Highways Authority of India (in short 'NHAI') under Section 3D of the National Highways Act, 1956 (in short 'the Act') was subject matter of consideration. The prayer was, thus, made for payment of compensation and damages to the petitioner on account of the respondents illegally occupying the land without following the due process.

The case as such of the petitioner was that he had earlier filed CWP No. 5103 of 2018 that on account of the location of the land which was situated close to National Highway No.21 and a slip road had been

constructed parallel to the national highway and land had been utilized as such, for which compensation had not been paid nor any award had been passed. Resultantly, the co-ordinate Bench, on 14.03.2018 (Annexure P-7), directed that it was a question of fact as such and resultantly directions were given to respondent Nos.2 to 4 to ascertain the correct facts and decide the petitioner's claim within a period of one month. The utilization of the petitioner's land for the above mentioned public purpose was to be without prejudice to his legal rights.

The petitioner, thus, relied upon report of the Land Acquisition Collector-cum-Sub Divisional Magistrate, Mohali dated 13.07.2018 (Annexure P-8) written to the NHAI that 4/6 laning of NH-21 and NH-95 had taken place in 2015 and 2017 and notifications had been issued, however, Khasra Nos.4//16/1/1 which had been required for said purpose did not find mention and, therefore, the owner of the land should be compensated.

In pursuance of various directions issued, thereafter eventually it is not disputed that on 13.04.2022, now an award has been passed wherein, a sum of Rs.76,10,290/- has been assessed as the market value which is inclusive of the solatium 100% and other statutory benefits as per the provisions of the Act.

Counsel for the petitioner submits that he is not satisfied with the same and is wanting to avail his legal remedies under Section 3G(5) of the Act and to approach the Arbitrator since the amount is not acceptable to him.

The issue, thus, only remains to the limited extent now as to whether what is the amount of compensation which is to be awarded in the form of damages to the petitioner whose land was taken in possession without due process of law. These are disputed aspects as to when the land was

utilized and in our considered opinion since the matter is to be filed before the concerned Arbitrator under the Act for enhancement of the amount, it would also be appropriate if the same authority takes a decision on the claim of the petitioner for the damages aspect. Even otherwise, it is settled principle that the writ Court will not enter into the arena of disputed facts.

Needless to say we have not observed on the merits of the case as to the entitlement of damages as it is only a *prima facie* opinion and it will be also open to the NHAI to file its response and plead its defence as to whether the land was given by consent or the State Authorities were remiss in any manner.

Resultantly, the present petition is disposed of with liberty to the petitioner to approach the same Arbitrator by filing a separate claim alongwith one which he is preferring to file against the award dated 13.04.2022 and the same shall be adjudicated upon by the said statutory authority.

The writ petition stands disposed of with the aforesaid observations.

(G.S. SANDHAWALIA)
JUDGE

11.01.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No