

228 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-16064-2018
Date of Decision : 28.08.2023

SUBE SINGH AND ORS.

.....Petitioners

Versus

UNION OF INDIA AND OTHERS

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present : Mr. Ajay Jain, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Anil Chawla, Senior Panel Counsel,
for respondents No. 1, 4 and 5-UOI.

SURESHWAR THAKUR, J. (Oral)

1. The petitioners land comprised in Khewat No. 68, Khatoni No. 88, Mustatil No. 17, Killa No. 23/1/1 measuring 5 kanal 10 marla situated at village Kaluwas, Tehsil and District Rewari, was acquired by the respondent concerned, for execution of special railway project, namely Rewari Sadalpur Bye Pass Line in District Rewari.

2. The above acquisition was in terms of the relevant provisions of Section 20 of the Railway Act, 1989.

3. The award as was made by the competent authority in respect of the above acquisition thus was pronounced on 29.12.2017.

4. Immediately thereafter as unfolded by Annexure P-3, the petitioners made an application before the respondents concerned, wherein, they requested that the remaining un-acquired land of the

present petitioners, which is but adjacent to the acquired lands be also put

to acquisition, as on its remaining un-acquired, thereupon there would be injury to their un-acquired land, and/or to the earnings, if any therefrom, thus becoming severely prejudiced or affected.

5. The respondent concerned, through drawing Annexure P-4 on 09.03.2018 and Annexure P-5 on 10.04.2018, appeared to not take any action thereons. However, the said requests were forwarded to the Deputy Chief Engineer, Construction-III, Opp. Railway Hospital, Hassanpura Road, North Western Railway, Jaipur. It appears that the said forwardings were made by the authors of Annexure P-4, and, P-5, thus to the competent authority, who may subsequent thereto hence hold the relevant jurisdiction to accede to the request of the present petitioners.

6. As stated (supra), it appears that the said became covered within the ambit of Section 20F, Sub Sections (3), (6) and (8) of the Railways Act, 1989, provisions whereof are extracted hereinafter.

“20F. Determination of amount payable at compensation :-

(1) xxxxx

(2) xxxxx

(3) 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.

(4) xxxxx

(5) xxxxx

(6) If the amount determined by the competent authority under sub-section (1) or as the case may be, sub-section (3) 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 in such manner as may be prescribed.

(7) xxxxx

(8) The competent authority or the arbitrator while determining the amount of compensation under sub-section (1) or sub-section (6), 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 20A;

(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.

(9) xxxxx”

7. Necessarily so, when the quantum of the area of the un-acquired lands just adjacent or adjoining the acquired lands, is merely 9 marlas thereby, prima facie, there is every possibility of the un-acquired minimal portion of the acquired lands being injuriously affected by its becoming not acquired or may be thereby an injury may became caused to the earnings, if any, as may become derived therefrom rather by the present petitioners.

8. In consequence, even if after the above representation, is not stricto sensu a motion within the ambit of Section 20F of the Railway Act, 1989, inasmuch as, it is not made with a view to invite the exercising of

justice, for the reason (supra), given the minimal quantum of the tract of the un-acquired land thus adjacent to the acquired land, which for further reason (supra) would affect the un-acquired lands, inasmuch as, it may affect the earnings therefrom of the petitioners. Therefore, the authority(ies) to whom the said representation (Annexure P-3), was made, thus was required to be construing the same to be a motion by the present petitioners, thus to invite the engagement thereons, of the arbitrator concerned.

9. Consequently, when the instant writ petition, has been filed immediately subsequent to the drawings of Annexure P-4 and P-5 thus, in pursuance to the representation (Annexure P-3). Therefore, when the instant petition before this Court, is not hit by the vices of delay and latches. In aftermath, for the above reason (supra), the authority concerned is directed to engage a valid arbitrator, so that the arbitrator concerned in terms of the above statutory provisions, hence proceeds to determine the necessity of acquisition being made of the un-acquired parcels of land of the co-petitioner.

10. The Arbitrator for the said purpose be forthwith appointed by the respondent concerned and the said appointed Arbitrator shall make a valid speaking decision on the relevant *lis* but after hearing all affected persons concerned. Disposed of alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

(MANISHA BATRA)
JUDGE

28.08.2023
kavneet singh