

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

Reserved on: 21.09.2023

Date of Pronouncement: November 08, 2023

1. CWP-15956-2023

Nirmal Singh		...Petitioner
	Versus	
Union of India and others		...Respondents

2. CWP-18691-2023

Naib Singh		...Petitioner
	Versus	
Union of India and others		...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Devinder Pal Singh, Advocate, for the petitioner.

Mr. Abhilaksh Gaiind, Nodal Advocate,
for respondent No.2-NHAI.

Mr. Athar Ahmad, DAG, Punjab.

HARKESH MANUJA, J.

1. By way of present writ petitions, challenge has been laid to an Award dated 08.10.2021 (Annexure P-9) passed by respondent No.3 in pursuance to the acquisition proceedings carried out for the benefit of respondent No.2, vide notifications dated 15.01.2021, issued under Section 3A of the National Highways Act, 1956 (hereinafter referred to as "the Act") and notification dated 23.04.2021 issued under Section 3D, followed by an award dated 08.10.2021 passed in exercise of powers under Section 3G(5) thereof. As factual and legal points involved in both the cases are same, they are being taken up together. For convenience, facts are being taken from CWP No. 15956 of 2023.

2. In the present case, the land owned by the petitioner, situated within the revenue estate of Village Jhaneri, Tehsil Bhawanigarh, District Sangrur, came to be acquired in pursuance to the aforementioned notifications. Grievance of the petitioner in the present writ petition has been that vide Award dated 08.10.2021, pertaining to village Jhaneri, respondent No.3 assessed the market value of the land @ Rs.65,43,742/- per acre whereas, for the adjoining village i.e. Phagguwala, the market value was assessed @ Rs.91,59,257/- per acre vide Award dated 30.06.2021 by respondent No.3.

3. Impugning the same, learned counsel for the petitioner submits that both the villages being adjacent to each other, respondent No.3 failed to exercise the jurisdiction vested under Section 3G(5) read in consonance with Section 3G(7) of the Act in its proper perspective and rather in a discriminatory and arbitrary manner besides having failed to follow the dictate of Section 26(1)(B) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4. On the other hand, Mr. Abhilaksh Gaind, Advocate, appearing on behalf of respondent No.2-NHAI having been supplied with advance copy of the writ petition submits that the present petition for the relief sought for was not maintainable as an alternate remedy under Section 3G(5) of the Act was available with the petitioner for invoking arbitration so as to assail the validity of the award passed by respondent No.3.

5. At this preliminary stage, I have heard learned counsels for the parties in details on the issue of maintainability of the writ petition in the wake of plea of alternate statutory remedy being available with the petitioner as pointed out by the learned counsel representing the respondents.

6. On the point of maintainability of present writ petition, learned counsel for the petitioner submits that the alternate statutory remedy available in terms of Section 3G(5) of the Act is onerous, burdensome and ineffective for the reason that the Award passed by the Arbitrator, needs to be assailed under Section 34 of the Arbitration and Conciliation Act 1996 (for short 1996 Act), wherein, the Court does not have power to modify the same. In support, learned counsel relies upon a decision made by the Hon'ble Supreme Court in case of **"Project Director, National Highways No.45-E and 220 National Highways Authority of India Vs. M. Hakeem and Another"**, reported as AIR 2021 SC 3471. Relevant para of the same is reproduced hereunder:-

46. *Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done. In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996. It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the*

working of the Arbitration Act, and bring it in line with other legislations the world over.

6.1 Learned counsel for the petitioner further submits that in terms of Section 3G(5) of the Act, the Central Government has been empowered to appoint Arbitrator for the purpose of determination of compensation on an application made by either of the parties being dissatisfied with the amount determined by the competent authority and under the said scheme, the Central Government has notified the Divisional Commissioner as an Arbitrator, which is clearly violative of principles of natural justice being own officer of the Government, always subjected to rules and regulations formulated by the Central government administratively and thus, cannot be termed an independent adjudicatory authority. In support, learned counsel for the petitioner places reliance upon decision of the Hon'ble Supreme Court in case of "**M/s Voestalpine Schienen Gmbh Vs. Delhi Metro Rail Corporation Ltd.**", reported as AIR 2017 SC 939.

7. On the contrary, learned counsel for respondent No.2 submits that the argument raised at the instance of learned counsel for the petitioner while relying upon the case of **M. Hakeem's case (supra)** is wholly misplaced for the reason that in the said judgment, the point in issue has been about the power of Principal Civil Judge to modify an Award in exercise of its power under Section 34 of the 1996 Act, while the Hon'ble Apex Court nowhere dealt with the power of an Arbitrator, vested under Section 3G(5) of the Act so as to interfere with the award passed by Competent Authority for Land Acquisition (for short "CALA").

7.1 As regards the other submission made on behalf of the petitioner about the appointment of Divisional Commissioner as an Arbitrator by the Central Government, learned counsel for respondents No.2 submits that neither this issue has been pleaded or raised in the entire writ petition; nor even the notification issued by the Central Government, appointing the Divisional Commissioner as an Arbitrator in terms of Section 3G(5) of the Act has been assailed therein.

8. I have heard learned counsel for parties and gone through the paper-book as well as the law cited at the Bar. I do not find any substance in the arguments raised by the learned counsel for the petitioner. Before delving into the arguments raised from both sides, it is necessary to peruse the brief history regarding the scheme of land acquisition for the purpose of national highways.

9. The Act, as originally enacted, did not provide for acquisition of land. Till the promulgation of National Highways Laws (Amendment) Act, 1997, all acquisitions for the purpose of National Highways were made under the Land Acquisition Act, 1894. For the purpose of speedy implementation of highway projects and to expedite the process of land acquisition, National Highways Laws (Amendment) Act, 1997 was brought in, vide which Section 3A to 3J were added in the Act which specified the procedure to be followed for the purpose of land acquisition under the Act and in accordance with Section 3J thereof, it was stipulated that nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act. Thereby, a separate but

comprehensive procedure was provided under the Act for the purpose of land acquisition.

10. It was on this account that a Division Bench of the Hon'ble Supreme Court, in "**General Manager (Project), National Highways and Infrastructure Development Corporation Ltd. v. Prakash Chand Pradhan and others**", reported as 2020(15) SCC 533, held that the Act is a comprehensive code in itself, which was also affirmed by a three judges bench in "**National Highways Authority of India v. Sayedabad Tea Company Limited and others**", reported as 2019 SCC OnLine SC 1102. Relevant para from Sayedabad's case (supra) is reproduced hereunder:-

"16. We are in full agreement with the legal position stated by a two Judge Bench of this Court in General Manager (Project), National Highways and Infrastructure Development Corporation Ltd. case(supra) but like to add further that the Act, 1956 has been enacted under Entry 23 of the Union List of the Seventh Schedule of the Constitution with the exclusive power to legislate with respect to highways, which are declared to be national highways by or under law by the Parliament. It is a comprehensive code and a special enactment which provides an inbuilt mechanism not only in initiating acquisition until culmination of the proceedings in determining the compensation and its adjudication by the Arbitrator to be appointed by the Central Government and if still remain dissatisfied, by the Court of law."

11. Though, subsequently in "**Union of India and another v. Tarsem Singh and others**", reported as 2019 (9) SCC 304, Hon'ble Supreme Court held Section 3J of the Act to be unconstitutional, to the extent of payment of solatium and interest, however, there was no interference with the procedure for land acquisition and assessment of compensation. It is apt to mention here that so far as the determination or the redetermination/enhancement of compensation under the Act is concerned, since 01.01.2015, provisions of 2013 Act were made applicable by the Ministry of Road Transport & Highways.

12. Now, the arguments raised by the learned Counsel for the petitioner in the present case can be examined in the above discussed scheme of law. Evidently, in case a land owner is not satisfied with the determination of compensation under the Act, the remedy has been specified under Section 3G(5) of the Act which is reproduced as below:-

"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."

13. Instead of availing the aforesaid remedy, petitioner has approached this Court under writ/supervisory jurisdiction under Article 226/227 of Constitution of India, impugning the award dated 08.10.2021 passed by respondent no. 3, stating it to be violative of the

right of the petitioner as enshrined in Article 14 for having provided discriminatory/less rate for his agricultural land, situated in village Jhaneri, in comparison to the rate provided for acquisition of adjoining land, situated in village Phagguwala vide award dated 30.06.2021; with further directions to respondents to provide parity to the petitioner in terms of compensation and solatium with the similarly situated land of village Phagguwala.

14. Learned Counsel for the petitioner has made extensive argument, placing reliance upon numerous Supreme Court judgments that when fundamental rights of a person are infringed, it would not be appropriate to direct the petitioner to an alternate remedy which is onerous, burdensome and ineffective. At this stage, it is required to notice that when the Constitution of India came into force on 26.01.1950, initially, the right to property was given status of Fundamental Right and two Articles, i.e. Article 19(1)(f) and Article 31 ensured that right of any person against his property remains protected. However, through 44th Amendment Act, 1978 of the Constitution of India, these two articles were repealed and a new Article, namely, 300A was inserted having title "Right to Property", and accordingly the same was no more a fundamental right, however, it still remains a constitutional right as protected under Article 300A which read as under:

"CHAPTER IV.—RIGHT TO PROPERTY

**300A.No person shall be deprived of his property
save by authority of law."**

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15. There is no confusion on the part that law applicable in the present case is the Act which has been duly legislated by the parliament and therefore, procedure as mandated under Section 3A to 3J of the Act would be required to be followed being stemming from Article 300A of Constitution of India. Remedy available to the petitioner under section 3G(5) is not merely an alternate remedy in the present case, rather it is a substantial statutory remedy, specifically legislated for circumstances as applicable in the present case, which is thus required to be pursued by the petitioner in case he is not satisfied with the determination of compensation.

16. Another ground taken by the petitioner is that his right enshrined in Article 14 has been violated on account of discriminatory/less rate for agricultural land, situated in village Jhaneri, in comparison to the rate provided for acquisition of adjoining land of others situated in village Phagguwala. This sole criteria cannot be a basis for alleging discrimination at the hands of respondent No. 3 as even for two adjacent villages, there could be multiple factors on the basis of which compensation could be different. The hollowness of this argument is very well demonstrated by the Hon'ble Apex Court in **"Kanwar Singh v. Union of India"**, reported as 1998(8) SCC 136, and relevant paras thereof are reproduced hereunder:-

"8. So far as the first argument that the appellants ought to have been given the same rate of compensation which was given to the claimants of the adjoining village is concerned, the amount of compensation for the land acquired depends on the market value of land on the date of

immediately before the notification under Section 4 of the Act or when some land is acquired and offer of compensation is made through an Award, whether such an offer of compensation represent the market value of the land on the date of notification under Section 4 of the Act, has to be determined on the basis of evidence produced before the Court. The claimants have to prove and demonstrate that the compensation offered by the Collector is not adequate and the same does not reflect the true market value of the land on the date of notification under Section 4 of the Act. This could only be done by the claimants by adducing evidence to the effect that on the relevant date, the market value of the land in question was such at which the vendor and the vendee (buyer and seller) were willing to sell or purchase the land. The consideration in terms of price received for land under bona fide transactions on the date or preceding the date of notification issued under Section 4 of the Act generally shows the market value of the acquired land and the market value of the acquired land to be assessed in terms of those transactions. Sale instances showing the price fetched for similar land with similar advantages under bona fide transaction of sale at or near about the issue of notification under Section 4 of the Act is well recognised to be the appropriate evidence for determining the market value of the acquired land.

9. *The contention of appellants' counsel that appellants deserved to be awarded the same rate of compensation as it was awarded to the claimants of village Masoodpur and Mahipalpur, in the present facts and circumstances of the*

case, is not tenable. If we go by the compensation awarded to claimants of adjoining village it would not lead to the correct assessment of market value of the land acquired in the village Rangpuri. For example village 'A' adjoins village 'B', village 'B' adjoins village 'C', village 'C' adjoins village 'D', so on and so forth and in that process the entire Delhi would be covered. Generally there would be different situation and potentiality of the land situated in two different villages unless it is proved that the situation and potentiality of the land in two different villages are the same. The High Court in the present case has found that the situation and potentiality of land in village Malikpur Khoi are different than that of village Masoodpur. This finding of the High Court is based on correct appreciation of evidence on record and does not call for interference.....”

17. This Court is one with the contention made by learned Counsel for the petitioner that if there is discrimination or violation of Article 14, it is the duty of the writ Court to interfere. However, in the circumstance of the present case which involves determination of market value qua two different villages, when a specific remedy has been provided by the legislature for the grievance of the petitioner, this Court shall cautiously intervene and exercise its discretionary jurisdiction but for only, when discrimination is writ large on the face and extremely apparent. In the present case, apart from a bare assertion that compensation granted for an adjacent village is on higher side, there is nothing on record which could suggest that the locational and the potential value of the two revenue estates is exactly

the same. There is neither any averment in the entire petition that the award passed by respondent No.3 suffers from any malice (of fact or of law) or this discrimination is on account of some extraneous reasons. Therefore, the grounds taken by the petitioner are completely inadequate to ensure confidence in the Court to exercise its discretionary jurisdiction in his favour. As observed in **Kanwar Singh's** case (supra), the obligation of proving discrimination and to bring evidence on record lies with petitioner. In the present case, as discussed above, obligation was on the petitioner to prove that discrimination has been meted out to him, but in the absence of any substantive material on record in this regard, it is not possible for this Court to hold so.

18. There is another aspect as well. It is a settled proposition of law that while challenging the order of an authority under writ jurisdiction, it is not the decision which is under challenge; rather it is the process to reach at that decision, which is under challenge. In the present case, no procedural irregularity, at hands of respondent No 3, has been alleged by the petitioner. A perusal of impugned award dated 15.01.2021 shows that market value has been assessed by respondent No. 3 on the basis of reports received from Tehsildar of the concerned area, in accordance with the procedure as mandated by the provisions of 2013 Act. In the report provided by the Tehsildar, which has been prepared on the basis of sale deeds of last 3 years, there is substantial difference in the market value of the land in two villages, therefore, no fault at this stage, can be found with the award

announced by respondent No. 3 on the basis of this report, specifically in the circumstance, when there is no challenge as such to the report prepared by the Tehsildar.

19. Additionally, in any case, petitioner would have ample opportunity in the arbitration proceedings, instituted on account of Section 3G(5) of the Act, to bring evidence on record and prove that the prevailing market rate in village Jhaneri is on similar or rather higher footing. But this being a disputed question of fact, cannot be entertained by this Court, as it has to be supported by way of leading evidence and has to be further corroborated by witnesses, which proceedings cannot be held by this Court under writ jurisdiction.

20. Contention made by the learned Counsel for the petitioner that alternate statutory remedy, available in terms of Section 3G(5) of the Act is onerous, burdensome and ineffective for the reason that the Award passed by the Arbitrator has to be assailed under Section 34 of the 1996 Act, wherein, the Court does not have any power to modify the Award passed by the Arbitrator, is a bit preposterous. Assessment of compensation is yet to be challenged before the Arbitrator, who is supposed to determine the validity of the award passed by respondent No 3/CALA, in accordance with settled procedure, after recording the evidence and analyzing the contentions made by both the parties. But at this stage, when no arbitral award has yet been passed, challenging the same in anticipation, is premature and cannot find favour by this Court.

21. The last contention by the learned Counsel for the petitioner that the Central Government has notified the Divisional Commissioner as an Arbitrator for the purpose of Section 3G(5) of the Act which is clearly violative of the principles of natural justice, is also required to be dealt with. It has been rightly pointed out by the learned counsel for respondent No.2 that this issue has neither been pleaded nor raised in the entire writ petition. Additionally, while it could be a ground to challenge the arbitral award/proceedings before an appropriate forum, but in my considered opinion, this cannot be a ground to challenge the award passed by respondent No 3.

22. In view of the discussion made hereinabove, both the writ petitions i.e. CWP-15956-2023 & CWP-18691-2023 are dismissed being devoid of any merit.

23. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

November 08, 2023

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