

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

141

CWP-20743-2023 (O&M)
Date of Decision: 17.10.2023

Bimla @ Bimla Devi

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S. S. Dinarpur, Advocate and
Mr. Rohit Singh, Advocate for the petitioner.

Mr. Abhilaksh Gaind, Nodal Advocate and
Mr. Bhupender Singh, Advocate for
Mr. Rishi Kaushal, Advocate
for respondent Nos.1 and 2-NHAI.

HARKESH MANUJA, J. (oral)

1. Prayer in the present civil writ petition is for issuance of a writ in the nature of Mandamus, directing the respondents to treat the land of the petitioner as '*Gair Mumkin Factory*' being situated abutting the road and within the Municipal Limits of Municipal Council, Jind and also to modify the awards dated 22.01.2019 (Annexure P-11) and 05.12.2022 (Annexure P-13), passed by respondent Nos.4 and 3 respectively, by computing the compensation payable to the petitioner @ Rs.20,000/- per sq. yard besides grant of all other statutory benefits.

2. Briefly stating, in the present case certain land belonging to the petitioner, situated within the limits of revenue estate of Village Nirjan, Tehsil and District Jind was acquired for construction of National Highway No.352-A. Award was passed by respondent No.4 in exercise of its powers under Section 3 (G) of the National Highways Act, 1956 (hereinafter referred to as '1956 Act') on 22.01.2019 by treating the land of the petitioner as 'Agricultural'. The grouse of the petitioner was that her land was '*Gair Mumkin*' and in this regard reliance was placed upon the sale deed dated 14.10.2010 (Annexure P-2) vide which it was purchased by her @ Rs.45 lakh per acre.

3. Aggrieved of the assessment made by respondent No.4, the petitioner invoked arbitration proceedings in terms of 3G(5) of 1956 Act. In a separate but related development, the petitioner also approached this Court by way of CWP No.12735-2022 seeking issuance of directions against respondents for passing a supplementary award by treating the nature of her land being '*Gair Mumkin*'. The said writ petition came to be disposed of vide order dated 02.06.2022 with the following observation(s):-

“ xxxxx

Learned counsel representing the petitioner contends that with regard to the Gair Mumkin land, the competent authority nominated under the National Highways Act, 1956, has not passed the supplementary award. As the matter is pending before the Arbitrator for assessment of the

compensation, let this matter be also considered by the Arbitrator. The Arbitrator has been appointed as per the mandate in the statute. In other words, Arbitrator is a statutory Arbitrator, appointed under the National Highways Act, 1956. The land owners have no option but have to get the matter adjudicated from the Arbitrator. In such circumstances, the petitioner shall be entitled to make a claim with respect to the grant of relief No.2 before the Arbitrator.

xxxx.”

4. Upon a perusal of above order dated 02.06.2022, it can safely be presumed that the petitioner was asked to approach the statutory Arbitrator only to seek her grievance in the matter. The arbitration proceedings initiated at the instance of the petitioner culminated into passing of an award dated 05.12.2022. Having gone through the said award it can be traced out that a specific plea regarding the land owned by the petitioner being situated on the road, falling within the Municipal Limits of Jind and being of ‘*Gair Mumkin*’ nature was specifically raised before the Arbitrator and the same was dealt with and rejected. Relevant portion of the award passed by the Arbitrator, in this regard is reproduced hereunder:-

“ xxx

15. (i) During course of arguments, Ld. Counsel for petitioner has argued that the acquired land was situated on road within Municipal limits of Municipal Council, Jind and the land was Commercial and Gair Mumkin (non-agricultural) in nature and petitioner is entitled for

enhanced compensation as the market value of her land has not been determined properly. Ld. Counsel for petitioner has argued that petitioner must be compensated at the rate of Rs.20,000/- per Sq. Yard alongwith other statutory benefits. Ld. Counsel for petitioner has made reference to Sale Deeds presented vide Ex. P18 to Ex. P30 and argued that Ex. P25 Sale Deed, Ex. P26 Sale Deed, Ex. P27, be considered as exemplar sale deeds while determining the market value and the rate fixed for stamp duty by the Collector as well as those determined by Competent Authority, be discarded.

xxxx

The Arbitrator has dealt with the aforesaid issue, which is as under:-

Regarding the location, the evidence on the file confirms that the impugned land is situated within the Municipal limits of Jind town and belongs to revenue estate of Nirjan. It is also confirmed from Aksh-Shajra (Site Map) and other pleadings that the land is situated on Nirjan-Pindara Road which is an other District Road (Road connecting two villages). It has also emerged that the land is situated away from Jind Bye-pass National Highway as well as Jind – Safidon State Highway Khasra Girdawari entries show the nature of land as non-agricultural land but there is no evidence on the file which suggest, the impugned land was being utilized as a commercial property.”

5. In addition, as per the information provided by the learned counsel for the petitioner, a petition under Section 34 of the Arbitration Act, 1996 already stands presented before the Competent Court of jurisdiction, assailing the award dated 05.12.2022. Thus, in view of the above, once the plea regarding the land belonging to the petitioner being situated abutting the road besides the same falling within the Municipal Limits of Jind, having '*Gair Mumkin*' nature has already been dealt with by the Arbitrator and the said award already having been impugned under Section 34 of the Arbitration Act, 1996, it may not be appropriate to interfere with the awards dated 22.01.2019 and 05.12.2022 passed by the CALA and the Arbitrator in exercise of powers conferred under Section 3G of 1956 Act.

6. Above all, in the humble opinion of this Court, the second writ petition at the instance of the petitioner-landowner seeking similar relief was not even maintainable, once this Court, on a previous occasion disposed of the previous writ asking for the same relief by directing the petitioner to raise her claim before the Arbitrator with an observation that the same be also considered by the Arbitrator.

7. The petitioner having earlier approached this Court by way of CWP No.12735 of 2022, cannot be allowed to raise the plea of discrimination by way of filing this present petition as she shall always be at liberty to raise all these issues before the Principal Civil Court of

141

CWP-20743-2023(O&M)

2023:PHHC:135640

Competent Jurisdiction in her petition under Section 34 of the Arbitration Act, 1996.

8. In view of the facts and circumstances of the case and the discussions made herein above, finding no merits in the present appeal, the same is **dismissed**.

9. Pending application(s), if any, shall stand(s) disposed off.

17.10.2023

Mangal Singh

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No