

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-170-2023
Date of Decision: 18.05.2023

M/S. BALAJI INDUSTRIES

..... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Ms. Kushaldeep Kaur, Advocate
for the appellant.

Ms. Puneet Kaur Sekhon, Advocate
for respondent no.2-NHAI.

Mr. Saurabh Mago, DAG, Haryana
for respondent no.3.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside 'award' dated 03.03.2021 (Annexure P-11), whereby land belonging to the petitioner has been acquired under Section 3D(1) of the National Highways Act, 1956 (hereinafter referred to as the 1956 Act) for construction (widening/four laning etc.), maintenance, management and operation of the road from Delhi – Amritsar – Katra expressway at village Hasangarh, District Rohtak. There is a further prayer for directing the respondents to carry out valuation of plant and machinery besides independent electricity connection installed at the factory of petitioner, before taking possession of the acquired land.

2. Facts as pleaded by the petitioner are that the petitioner is owner of land comprised in Khasra No.183//23, measuring 4840 square yards, situated at village Hasangarh, Tehsil Sampla, District Rohtak. It is stated that petitioner

has established its factory for manufacturing of steel ingots and related works in respect of which NOC No.2543 dated 24.08.2009 was issued by District Town Planner. Factory of the petitioner is stated to be running wherein heavy machinery at the cost of ₹1,48,62,000/- stands installed. Independent connection of 1015 KW was secured by the petitioner for which line of 1.8 kilometers was laid for electricity connection at the site and cost of independent connection is valued as ₹74,68,959/- as per valuation by SDO, Sub Office UHBVN, Hasangarh (Annexure P-8).

3. Land in question was notified for acquisition by Government of India under Section 3A of the 1956 Act vide notification dated 01.10.2020 for the Delhi – Amritsar – Katra expressway. Petitioner is stated to have submitted objections on 12.11.2020 under Section 3-C of the 1956 Act while also submitting that in case acquisition of land is absolutely essential, compensation at commercial rates should be paid apart from compensation for independent electricity connection, plant and machinery installed at the factory and the constructed portion thereof. With reference to report of competent authority attached as Annexure P-9, it is stated that objection regarding commercial rates, compensation qua independent electricity connection and payment of compensation with respect to machinery installed at the factory was accepted by DRO-cum-CALA to the extent that compensation was directed to be calculated and paid in terms of Section 26 and Section 28 of RFCTLARR Act, 2013 and that valuation of assets on the land would be conducted before assessing compensation.

4. Declaration under Section 3D(1) of the 1956 Act was issued on 31.12.2020. No valuation in respect to the plant, machinery and independent

electricity connection was carried out, therefore, petitioner is stated to have submitted representation dated 10.02.2021 in this respect. Impugned 'award' dated 03.03.2021 (Annexure P-11) was, however, passed without considering the issues as above with insufficient compensation of only the land being assessed.

5. Aggrieved of determination of such compensation, petitioner submitted reference under Section 3 G(5) of the 1956 Act on 06.04.2021. Arbitrator appointed under provisions of the 1956 Act considered report dated 17.06.2021 of the Tehsildar Sampla, which was called for during proceedings before the Arbitrator, whereby it is mentioned that land in question is reflected as 'commercial' in the Jamabandi since 2010 and it is by mistake that the land has been mentioned as 'vacant' in the Jamabandi for the year 2020 as the industry is still running on the spot. Arbitrator also noted the stand of DRO-cum-Competent Authority that due to inadvertent mistake, objections by the petitioner as accepted under Section 3(C) on 09.12.2020 could not be complied with. Award dated 24.11.2021 was thus passed by the learned Arbitrator wherein DRO-cum-Competent Authority was directed to ensure compliance of its own decision on objections No.2, 3, 4(i) and 5 by the petitioner. It was further directed that NHAI should ensure evaluation of the structure etc. on immediate basis.

6. Respondent – NHAI preferred objections thereto under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Arbitration Act), with the specific plea that it was not arrayed as party before Arbitrator and moreover Arbitrator had no power to remand the matter.

Learned Additional District Judge, Rohtak, vide order dated 08.02.2022 stayed

the operation of award dated 24.11.2021 while noting said contentions on behalf of NHAI.

7. It is to be noted at this stage that the petitioner has not appended award dated 12.03.2021, passed by DRO-cum-Competent Authority while attaching the document dated 03.03.2021 purported to be the award (Annexure P11), which is admittedly only a copy of proceedings for determination of nature etc. of the acquired land. Neither has copy of Award dated 24.11.2021 passed by the Arbitrator been appended. The petition is conspicuously silent about order dated 08.02.2022 passed by the learned Additional District Judge, Rohtak, though it is apparent from perusal of the file that petitioner was aware of the same and application seeking vacation of stay granted on 08.02.2022, was also filed by the petitioner. Copy of award dated 12.03.2021, passed by DRO-cum-Competent Authority, award dated 24.11.2021, passed by Deputy Commissioner-cum-Arbitrator, Rohtak and order dated 08.02.2022 have been appended as Annexure R1/1, R2/2 and R3/3 with the reply filed on behalf of respondent no.2.

8. During pendency of this writ petition, supplementary award dated 18.11.2022/07.02.2023 has been passed whereby compensation for the structure, building and machinery (for which entitlement of the petitioner was found) has been awarded. Copy thereof, alongwith structure valuation report are available on the file as Annexure R2/5 and R2/6.

9. Learned counsel for the petitioner had vehemently argued that valuation of the property was not carried out despite the report Annexure P-9 wherein objections raised by the petitioner in respect to electricity connection, commercial rate and machinery were accepted. Learned counsel for the

petitioner further argued that valuation and assessment of the building, plant and machinery besides independent electricity connection should be carried out so that the petitioner can be compensated for the same. Petitioner, it is stated, has no other land except the one which has been acquired by the respondents over which factory can now be raised again. Despite various representations submitted by the petitioner valuation of the property is not being carried out due to which the only remedy left with the petitioner was to approach this Court under Article 226 of the Constitution of India. Value of the machinery installed on the land is stated to be approximately ₹1,48,62,000/- and that of the independent electricity connection to be ₹74,68,959/-. Learned counsel for the petitioner asserted that once possession of the land alongwith building is taken, petitioner shall suffer irreparable loss which cannot be adequately compensated for the simple reason that in the absence of valuation of the plant and machinery etc., it would be difficult for the petitioner to prove the same in any subsequent proceedings. Learned counsel for the petitioner had asserted that as per report Annexure R2/6 valuation is clearly incorrect and has not been carried out in regard to the entire machinery which is permanently fastened to the land in question. In respect to the argument that land in terms of acquisition includes anything 'permanently fastened to earth', she has referred to a number of judgments on this aspect including the judgment of the Hon'ble Supreme Court in *State of Maharashtra and others Vs. Reliance Industries Ltd. And others AIR 2017 SC 4490*, *The Secretary of State for India in Council Vs. Tarak Chandra Sadhukhan 1927 (Vol.XXXI) the Calcutta Weekly Notes 950 (Privy Council)*, *Secretary of State for India in Council Vs. Tarak Chandra Sadhukhan 1927 Indian Appeals (Vol. LIV) 187* and *State of Madras Vs.*

WVA Govindaraju Chettair 1967 SCC Online Mad 254. It had been submitted that irreparable loss shall be caused to the petitioner in case proper valuation is not carried out. It was submitted that dispossession of petitioner should be stayed till complete valuation is not carried out. It was, thus, prayed that present writ petition be allowed and prayer confined to valuation of the plant, machinery etc. being ordered with dispossession of the petitioner be stayed till then.

10. Per contra, learned counsel for respondent no.2 – NHAI had opposed the writ petition tooth and nail while submitting that petitioner has deliberately not brought on record all material facts in-as-much as copy of the award dated 24.11.2021 passed by Deputy Commissioner-cum-Arbitrator, Rohtak has not been appended with the writ petition and furthermore, petitioner has also not disclosed that operation of the said award stands stayed vide order dated 08.02.2022, passed by learned Additional District Judge, Rohtak, in the petition under Section 34 of the Arbitration Act, filed by respondent no.2. Learned counsel for respondent no.2 submits that a bare reading of order dated 09.01.2023, passed by the co-ordinate Bench in this writ petition, reflects that petitioner has sought to project as if it is the petitioner who has filed the petition under Section 34 of the Arbitration Act. It was further contended that petitioner in fact seeks to initiate parallel proceedings as admittedly order dated 08.02.2022 is still in operation and petitioner's application seeking vacation of interim relief granted thereon is pending. Moreover, compensation in terms of the statutory provisions stands deposited. While referring to supplementary award dated 18.11.2022/07.02.2023, learned counsel for respondent no.2 submits that award qua the structure has also been passed and in case petitioner has any grievance thereof, it is open to the petitioner to avail the remedies available to it. It is thus

prayed that this writ petition be dismissed with cost as the petitioner has not approached the Court with clean hands and is guilty of concealment.

11. We have heard learned counsel for the parties and have gone through the file with their able assistance.

12. At the outset gainful reference can be made to Section 3 of the 1956 Act, which delineates the entire process of acquisition, raising of objections, grant of compensation etc. The same reads as under:-

[3. Definitions. – In this Act, unless the context otherwise required,-

(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) “land” includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

3A. Power to acquire land, etc. – (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall be give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3B. Power to enter for survey, etc. – On the issue of a notification under subsection (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to –

- (a) make any inspection, survey, measurement, valuation or enquiry;
- (b) take levels;
- (c) dig or bore into sub-soil;
- (d) set out boundaries and intended lines of work;
- (e) mark such levels, boundaries and lines placing marks and cutting trenches; or
- (f) do such other acts or things as may be laid down by rules made in this behalf by that Government.

3C Hearing of objection. – (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections. Explanation. – For the purposes of this sub-section, “legal practitioner” has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

3D. Declaration of acquisition. –

(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to

the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired to the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect; Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

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 persons 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

3F. Right to enter into the land where land has vested in the Central Government. – Where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

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 subsection (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or subsection (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 92) 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 –

(a) the market value of the land on the date of publication of the notification under section 3A;

(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.

3H. Deposit and payment of amount. –

(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under subsection (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine percent per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.

3-I. Competent authority to have certain powers of civil court.

– The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence of affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing commission for examination of witnesses.

3J. Land Acquisition Act 1 of 1894 not to apply. – Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.] If any land is acquired under the provisions of this Act then nothing in the Land Acquisition Act, 1894 (1 of 1894) shall apply.

13. Acquisition of the land in question under provision of the National Highway Act, 1956 is a matter of record. It is to be noticed that petitioner has not attached all the relevant documents with the writ petition, as already observed in the foregoing paras. Said documents have been attached with the reply filed on behalf of respondent no.2. The same assumes significance due to various reasons. It is essential to refer to the objections filed by the petitioner and decision of DRO-cum-CALA as reproduced in the document attached as Annexure P-9. The same read as under:-

1	2	3	4	5	6	7	8
x	x	x	x	x	Prayer of the Objector	X	Decision by DRO-cum-CALA
					1. In the above Killa No., Balaji Industries was established in the year 2010 is still running after taking NOC no.2543 dated 24.08.2020 from the District and Town Planner Rohtak. 2. If our Balaji		1. On the basis of the comments of the NHAI, the design/layout was made as per the provisions of the NH Act 1956. It is not possible to make changes in the layout plan now. The objection is therefore, dismissed. 2. The compensation for the acquired land will be calculated

				Industries is acquired, then Commercial Rate be given. 3. We should even be compensated for the independent electricity connection we have taken with estimated cost fo Rs.65,00,000/-. The Electricity connection is 1015 KWH. The line from our factory to the Power House is 1.8 Kms. 4. That we shold be compensated for the machine installed in the Factory because we don't have other land or in exchange give us land in Hassangarh where we can set up our unit. In which no department has any objection. 5. The fair compensation for construction of factory shall also be provided and with the prayer, the NOC and copy of electricity bill is enclosed.	and paid as per the provisions under section 26 of the RFCTLARR Act, 2013. Hence, the objection is not accepted. 3. The Compensation for the Indipendent Electricity Connection in the Factory will be calculated as per the provisions of Section 26 of the RFCTLARR Act 2013. Hence, the objection is accepted. 4. (i) The Compensation for the Machine, etc. Installed in the factory will be calculated as per the provisions of Section 28 of the RFCTLARR Act 2013. Hence the objection is accepted. (ii) there is no provision under NH Act, 1956 to give land in exchange of the acquired land. Hence the objection is dismissed. 5. The Acquisition of land for the Delhi-Amritsar-Katra National Express Highway is being done as per the NH Act, 1956. The Compensation for the Acquired land will be calculated as per the provision of the RFCTLARR Act 2013 and NH Act, 1956. Together with this the valuation for the assets on the acquired land will be done by the concerned Department after site inspection and the compensation will be given accordingly. Hence, the objection is accepted.
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14. Deputy Commissioner-cum-Arbitrator, Rohtak, in the award dated 24.11.2021 held that when the Competent Officer-cum-District Revenue Officer, Rohtak passed order dated 09.12.2020, regarding objections preferred by petitioner, same were required to be complied with while issuing notification under Section 3 (D) of the 1956 Act. It is observed by the learned Arbitrator in its award dated 24.11.2021 as under:-

“In this manner the above land is Commercial whereas the report prepared during acquisition is based on falsity. As per copy of Khasra Girdwari year 10/2010 to 2/19 the land in Killa no.183//23 measuring 8 Kanal G.M. shown as Company but in year 3/2020 has been shown as 'Empty'. Whereas, as per Inspection Report prepared on the directions of the Court, Balaji Industry running on the spot, is presently in working condition. In manual copy of Khasra Girdwari GM Factory is entered. Therefore showing Empty in Khasra Gidawari of year 3/2020 of land Killa No. 183//23 area 8 Kanal is suspicious. The representative of the answering respondent admitted in the Court that while issuing Notification 3(d) on 31.12.2020 due to inadvertent mistake the objections/application of the appellant which were accepted under Section 3(c) on 09.12.2020 could not be complied with. District Revenue Officer-cum-Land Acquisition Collector, Rohtak vide letter No.964/LA dated 22.10.2021 has informed the Court that as per instructions issued by Ministry of Road Transport and Highway in December 2018 after the publication of Section 3D in NH Act 1956, the Competent Authority (Land Acquisition) is not competent to change the type of land. Whereas the Competent Authority had passed the order on 09.12.2020 under Section 3C by accepting the objections submitted by the appellant against Notification 3A. Keeping in view the above facts this Court comes to the conclusion that Competent Authority-cum-District Revenue

officer, Rohtak when passed the order dated 09.12.2020 regarding the application/objections of the appellant, then same is to be complied with while issuing Notification 3(D), which was not done, this is a serious lapse. Which accepted in the Court during arguments. Apart from this the concerned Revenue officer and employees while acquiring the industrial land of the appellant described as agriculture land, is also put question mark on the character of the concerned Revenue officers/employees. Therefore the present case is decided with a direction that the Competent Authority-cum-District Revenue Officer, Rohtak, for the salvage of the Objection No.2, 3, 4(A) and 5 of the appellant/applicant, copy of the decision taken by him be provided to the appellant/applicant and ensure compliance on it. Apart from this direction is issued to the National Highway Authority that they ensure to evaluate the structure etc. on immediate basis, so that be saved from unnecessary delay. In the interest of justice above all proceedings be completed within 15 days. On the lapse committed by the Competent Authority-cum-District Revenue Officer, Rohtak and Revenue Officers/employees this Court recommends to initiate Departmental Disciplinary action against them. One copy of this order be sent the Department for the same. File after compliance consigned to record room.”

15. Aggrieved of award dated 24.11.2021, respondent no.2 sought its remedy under Section 34 of the Arbitration Act *inter-alia* raising the ground that firstly NHAI was not even party before the Arbitrator and moreover, Arbitrator

did not have the power to remand the matter. Taking note thereof, learned Additional District Judge, Rohtak stayed the operation of award dated 24.11.2021. Copy of award dated 24.11.2021, passed by learned Arbitrator and order dated 08.02.2022, passed by learned Additional District Judge, Rohtak are attached as Annexures R2/2 and R2/3 by respondent no.2 with its reply.

16. It is not denied that operation of impugned award dated 24.11.2021 continues to remain stayed till date despite an application for vacation thereof having been filed by the petitioner. When faced with the same, learned counsel for the petitioner submitted that scope of the present writ petition is different as petitioner does not seek enhancement of compensation qua the land in this writ petition and the claim is limited for carrying out valuation of plant, machinery and independent electricity connection installed at the factory situated on the land in question. However, the fact remains that petitioner raises specific challenge to the award passed qua acquisition of land dated 03.03.2021 even though it is only the report which is purported to be the award. Objections No.1, 2 & 4(ii) were categorically rejected. Award in this respect was admittedly passed on 12.03.2021. Learned Arbitrator in the award dated 24.11.2021 has directed valuation of the structure etc. by the National Highway Authority. Operation of the said award stands stayed by learned Additional District Judge, Rohtak. Petitioner while not even attaching a copy of award dated 24.11.2021 has actually concealed order dated 08.02.2022, by learned Additional District Judge, Rohtak. It has also been concealed that petitioner has filed an application seeking vacation of stay granted on 08.02.2022.

17. We particularly note that it is selective information which has been set forth in the writ petition by the petitioner. It was incumbent upon the

petitioner to have attached a copy of award dated 24.11.2021, passed by the learned Arbitrator alongwith a copy of order dated 08.02.2022, passed by learned Additional District Judge, Rohtak, whereby operation of order dated 24.11.2021 was stayed. This is so for the reason that the Arbitrator in the award dated 24.11.2021 has specifically called for valuation of the structures etc. Furthermore, in the present case, valuation of the structure etc. has been carried out and supplementary award dated 18.11.2022/07.02.2023 i.e. Annexures R-2/6, has been passed even though the petitioner claims the same to have been incorrectly passed without taking into note the heavy machinery, which is permanently fastened to the land in question.

18. Be that as it may, in our considered opinion alternate efficacious remedy is available with the petitioner. Petitioner deliberately chose to conceal material facts in this writ petition which clearly dis-entitle him for the relief as claimed under Article 226 of the Constitution of India. It is a settled position of law that relief in such circumstances can be denied solely on this ground. Furthermore, even if it is to be accepted as has been subsequently urged before us by learned counsel for the petitioner that the proceedings emanating from award dated 12.03.2021 are related only to compensation qua the land and not regarding the machinery etc., we note that supplementary award dated 18.11.2022/07.02.2023 has been passed. The same is not under challenge before us and moreover, all these pleas are available to the petitioner to be taken up before the appropriate forum.

19. Before parting with the decision, we would observe that in such situations where dispute is raised regarding the machinery, it would be conducive and in the interest of all the parties including NHAI that valuation of

the entire structure, machinery etc. should be carried out. This exercise would obviate any confusion at a later stage. The concerned authority would be in a better position to assess whether the land owner/claimant is entitled to compensation thereof or not.

20. In the present case, while not finding any ground to interfere, keeping in view conduct of the petitioner we leave the petitioner to its remedy/remedies in accordance with law. In case necessary steps are taken by the petitioner within one week, we direct the appropriate authority to consider the prayer for valuation of the machinery in question, in accordance with law and necessarily subject to its final decision.

21. Writ petition is disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

18.05.2023

Sunil

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