In the High Court of Punjab and Haryana at Chandigarh

CWP No. 9896 of 2023 (O&M)
Reserved on : 8.2.2024
Date of Decision: 29.2.2024

Hemraj Aggarwal and others ......Petitioners

Versus

Union of India and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Argued by: Mr. Charanpal Singh Bagri, Advocate and
Dr. Gurjit Kaur Bagri, Advocate
for the petitioners.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Ashish Rawal, Sr. Panel Counsel,
for respondents No. 1, 2 and 5.

Mr. R.S.Madan, Advocate and
Mr. Mahender Joshi, Advocate
for respondents No. 3, 4 and 6-NHAI.

Mr. Maninder Singh, Sr. DAG, Punjab.

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SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners seek quashing of the notification dated 29.1.2021 (Annexure P-1) issued under Section 3A(1) of the National Highways Act, 1956 (for short 'the Act of 1956'), and, of notification dated 31.5.2021 (Annexure P-2) issued under Section 3D(2) of the Act of 1956, besides seek quashing of the award dated 22.3.2022 (Annexure P-3). The petitioners also seek quashing of the order dated 9.9.2021 (Annexure P-6).

2. The learned counsel for the petitioners in his asking for the reliefs (supra) has made the hereinafter submissions.

(i) That the acquisition, as made of the petition lands, is void, and, non est, as no social impact assessment study has been conducted for the project, whereas, the same has been done for the other national highway projects undertaken by the respondent concerned, i.e. the project, namely, "Development of access controlled Amritsar-Bathinda Greenfield Highway", and, the project "Development of access controlled Ludhiana-Rupnagar Greenfield." Therefore, he submits, that when in respect of the said projects, the Social Impact Assessment report became prepared, and, also the comprehensive Resettlement Policy Framework (RPF) also became prepared for the affected families rather from the projects (supra). Consequently, he argues that since the present petitioners are but similarly situated to the affected families (supra) from the projects (supra), thereby the present petitioners are entitled to parity of treatment with the affected families from the projects (supra). The learned counsel further submits, that the purported reason meted by the respondent concerned, to not assign the espoused parity of treatment to the present petitioners, vis-a-vis, the affected families from the above projects, inasmuch as, on the premise that the said projects have been funded by the World Bank, whereas, the instant project becoming funded by the Government of India, rather is a flimsy reason, and, the said flimsy reason is not required to be assigned any credit by this Court.

(ii) That since the State of Punjab in reply to the instant writ petition has admitted that the Resettlement and Rehabilitation award would be passed after receipt of report from PWD, or the approved valuers, thereby the inaction, if any, on the part of the acquiring authorities is required to be undone, and, rather a mandamus is required to be made, upon the respondent concerned, to draw, and, to enforce the Resettlement and Rehabilitation scheme.

(iii) That despite the petitioners raising objections to the launching of the acquisition proceedings yet neither an opportunity of personal hearing being granted to the petitioners as per Section 3C(2) of the Act of 1956, nor also the said objections becoming decided, thus through well made objective reasons. The learned counsel further submits, that the objections relating to the saving of brick-kiln of the petitioners rather from acquisition, though became filed by the petitioners, thus on the ground that it was the source of livelihood of the petitioners, but yet vis-a-vis the said objections, no opportunity of personal hearing being granted to the petitioners, nor the said objections becoming judiciously decided. Therefore, he contends, that the launching of the acquisition proceedings has been done in a most arbitrary manner.

(iv) That the respondent concerned in passing the impugned award (Annexure P-3), has failed to in terms of the quality of the land brought to acquisition, thus determine compensation, thereby it is contended, that neither just nor reasonable compensation has been assessed vis-a-vis the petition lands.

(v) That no compensation for loss of business/goodwill, has been ascertained till date, and, thereby for failure of determination of compensation in respect of the above, thereby the award (Annexure P-3) is liable to be quashed and set aside.

(vi) That the assertion of the respondent concerned, that on the date of the declaration under Section 3-D of the Act of 1956, the petitioners had no valid licence to operate the brick-kiln, rather is also a flimsy reason, as the licence dated 12.8.2022 for the above purpose became issued by the competent authority i.e. the District Controller Food, Civil Supplies and Consumer Affairs.

Submissions on behalf of the learned counsels for the respondents

3. The learned counsels for the respondents submit, that the acquisition launched under the Act of 1956 is in the nature of compulsory acquisition for which adequate compensation along with statutory benefits has been granted to the land owners concerned. He further submits that the lands of the petitioners became acquired for the public purpose i.e. building, widening and operation of the Southern Ludhiana Byepass. It is further submitted, that on the date of declaration under Section 3-D of the Act of 1956, the petitioners had no valid licence to operate the brick-kiln. The letter pertaining to the renewal of licence, and, the second letter pertaining to the validity of the licence became issued by two different authorities. The learned counsel further submits, that since the remedy of statutory arbitration is available to both the parties, therefore, the instant petition is not maintainable before this Court.

4. The learned counsels for the respondents further submit, that insofar as the issue relating to prior environment clearance being obtained, rather is concerned, thereupon, as per notification dated 14.9.2006 (Annexure P-18), thus the Ministry of Environment and Forests had constituted a High-Level Committee to review the provisions of

Environmental Impact Assessment Notification, 2006. In sequel whereof, the High Level Committee, as revealed by a notification dated 22.8.2013 (Annexure R-3/2) recommended that expansion of National Highway projects upto 100 kilometers additional right of way or land acquisition upto 40 meters on existing alignment and 60 meters on re-alignment or by-passes, thus may be exempted from the purview of the notification. On account of the above, the sub item (f) of item 7 in column 3 for entry (ii) as mentioned above was substituted by the following.

> *(ii) Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on re-alignment or by passes."*

5. Therefore, the learned counsels submit, that no Environmental Clearance is required for the project in question, as the same is only required for expansion of National Highway projects above 100 kms, however, the Ludhiana-Southern Bypass is only 25.5 kms in length. They further submit, that the Social Impact Assessment provision under Section 4 of the Act of 2013, does not find mention in the First, Second or Third Schedule, and, therefore is not made applicable to the National Highways Act, and, the National Highway projects.

6. He further submits, that insofar as the issue with regard to Social Impact Assessment report in view of Sections 4 to 8 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013), is concerned, the said Act came into force on 1.1.2024, whereas, Section 105 of the Act of 2013 provides that the provisions of this Act shall not apply in certain cases or are to apply in certain cases with certain modifications.

7. The learned counsel for the respondents-NHAI further submits that the substance of notification under Section 3-A of the Act of 1956 has been duly published in the daily newspaper, whereby an opportunity of hearing was afforded to the landowners to file their objections under Section 3-C of the Act. Thereafter the objections were received from the landowners concerned, and, the same were disposed of by the competent authority concerned. Therefore, it is contended, that the argument raised by the learned counsel for the petitioners, that the objections were not decided through a well informed reason, becomes completely negated.

Analysis of the submissions of the learned counsel for the petitioners, and, of the learned counsels for the respondents, and the reasons for rejecting the submissions of the learned counsel for the petitioners, and, for accepting the submission of the learned counsels for the respondents.

8. The learned counsel for the petitioners has made a vigorous address before this Court, that though in respect of the project nomenclatured, as "Development of access controlled Amritsar-Bathinda Greenfield Highway", and, also in respect of the project nomenclatured, as "Development of access controlled Ludhiana-Rupnagar Greenfield", thus the Social Impact Assessment Report rather has been prepared, and, also the comprehensive Resettlement Policy has been formulated, thus for the benefit of the affected families from the projects (supra). Moreover, he submits, that despite the petitioners becoming similarly situated vis-a-vis the affected families from the projects (supra), wherebys the present petitioners became entitled to parity of treatment with the affected families from the projects (supra). Nonetheless, he submits, that the said parity has not been assigned to the present petitioners on the purported premise, that the instant project has been funded by the Government of India, whereas, the projects (supra)

became funded by the World Bank.

9. However, for the reasons to be assigned hereinafter, the above made argument is pretextual, nor, also if any beneficent grace of the Social Impact Assessment report, thus became assigned to the affected families from the projects (supra), yet the assigning of the said beneficent grace to the affected families concerned, rather is inconsequential. Resultantly also thereby the above argument raised by the learned counsel for the petitioners, that in the respondent concerned, rather not assigning parity to the present petitioners with the said similarly situated affected families also becomes completely rudderless. The above argument is planked upon the provisions of Sections 4 to 8 of the Act of 2013, provisions whereof stand extracted hereinafter.

> ***4. Preparation of Social Impact Assessment study.–***
> *(1) Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them, in such manner and from such date as may be specified by such Government by notification.*
> *(2) The notification issued by the appropriate Government for commencement of consultation and of the Social Impact Assessment study under sub-section (1) shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government:*
> *Provided that the appropriate Government shall ensure that adequate representation has been given to the representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be, at the stage of carrying out the Social Impact Assessment study:*
> *Provided further that the appropriate Government shall ensure the completion of the Social Impact Assessment study within a period of six months from the date of its commencement.*
> *(3) The Social Impact Assessment study report referred to in sub-section (1) shall be made available to the public in the manner prescribed under section 6.*

(4) The Social Impact Assessment study referred to in sub-section (1) shall, amongst other matters, include all the following, namely:(a) assessment as to whether the proposed acquisition serves public purpose;

(b) estimation of affected families and the number of families among them likely to be displaced;

(c) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;

(d) whether the extent of land proposed for acquisition is the absolute bare- minimum extent needed for the project;

(e) whether land acquisition at an alternate place has been considered and found not feasible;

(f) study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-a-vis the benefits of the project:

Provided that Environmental Impact Assessment study, if any, shall be carried out simultaneously and shall not be contingent upon the completion of the Social Impact Assessment study.

(5) While undertaking a Social Impact Assessment study under sub-section (1), the appropriate Government shall, amongst other things, take into consideration the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.

(6) The appropriate Government shall require the authority conducting the Social Impact Assessment study to prepare a Social Impact Management Plan, listing the ameliorative measures required to be undertaken for addressing the impact for a specific component referred to in sub-section (5), and such measures shall not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be, the State Government, in operation in the affected area.

***5. Public hearing for Social Impact Assessment.**–Whenever a Social Impact Assessment is required to be prepared under section 4, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report.*

***6. Publication of Social Impact Assessment study.**–*

(1) The appropriate Government shall ensure that the Social Impact Assessment study report and the Social Impact Management Plan

referred to in sub-section (6) of section 4 are prepared and made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government.

(2) Wherever Environment Impact Assessment is carried out, a copy of the Social Impact Assessment report shall be made available to the Impact Assessment Agency authorised by the Central Government to carry out environmental impact assessment: Provided that, in respect of irrigation projects where the process of Environment Impact Assessment is required under the provisions of any other law for the time being in force, the provisions of this Act relating to Social Impact Assessment shall not apply.

B.—APPRAISAL OF SOCIAL IMPACT ASSESSMENT REPORT BY AN EXPERT GROUP

7. Appraisal of Social Impact Assessment report by an Expert Group.–

(1) The appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary Expert Group, as may be constituted by it.

(2) The Expert Group constituted under sub-section (1) shall include the following, namely:—

(a) two non-official social scientists;

(b) two representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be;

(c) two experts on rehabilitation; and

(d) a technical expert in the subject relating to the project.

(3) The appropriate Government may nominate a person from amongst the members of the Expert Group as the Chairperson of the Group.

(4) If the Expert Group constituted under sub-section (1), is of the opinion that,—

(a) the project does not serve any public purpose; or

(b) the social costs and adverse social impacts of the project outweigh the potential benefits, it shall make a recommendation within two months from the date of its constitution to the effect that the project shall be abandoned forthwith and no further steps to acquire the land will be initiated in respect of the same:

Provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision:

Provided further that where the appropriate Government, inspite of such recommendations, proceeds with the acquisition, then, it shall ensure that its reasons for doing so are recorded in writing.

(5) If the Expert Group constituted under sub-section (1), is of the opinion that,—

(a) the project will serve any public purpose; and

(b) the potential benefits outweigh the social costs and adverse social impacts, it shall make specific recommendations within two months from the date of its constitution whether the extent of land proposed to be acquired is the absolute bare-minimum extent needed for the project and whether there are no other less displacing options available:

Provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision.

(6) The recommendations of the Expert Group referred to in sub-sections (4) and (5) shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed and uploaded on the website of the appropriate Government.

8. Examination of proposals for land acquisition and Social Impact Assessment report by appropriate Government.–

(1) The appropriate Government shall ensure that—

(a) there is a legitimate and bona fide public purpose for the proposed acquisition which necessitates the acquisition of the land identified;

(b) the potential benefits and the public purpose referred to in clause (a) shall outweigh the social costs and adverse social impact as determined by the Social Impact Assessment that has been carried out;

(c) only the minimum area of land required for the project is proposed to be acquired;

(d) there is no unutilised land which has been previously acquired in the area;

(e) the land, if any, acquired earlier and remained unutilised, is used for such public purpose and make recommendations in respect thereof.

(2) The appropriate Government shall examine the report of the Collector, if any, and the report of the Expert Group on the Social Impact Assessment study and after considering all the reports, recommend such area for acquisition which would ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected.

(3) The decision of the appropriate Government shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government:

Provided that where land is sought to be acquired for the purposes as specified in sub-section (2) of section 2, the appropriate Government shall also ascertain as to whether the prior consent of the affected families as required under the proviso to sub-section (2) of section 2, has been obtained in the manner as may be prescribed."

10. However, the above made argument is completely rudderless. The reason for forming the above conclusion, becomes sparked from the trite factum, that all the statutory provisions, as embodied in the Act of 2013 are not *ipso facto* made applicable to the Act of 1956. Though in Chapter II of the Act of 2013, there occur provisions qua preparation of social impact report qua the land put to acquisition, besides also occur provisions, thus for an appraisal being made of the Social Impact Assessment report, as becomes prepared by an expert group.

11. However, the provisions, as contained in Section 105 of the Act of 2013, provisions whereof stand extracted hereinafter, carry thereins echoings, thus with regard to the extent of applicability of all the statutory provisions, as, engrafted in the Act of 2013, thus to other statutes. Moreover, thereins also occurs in sub-Section (1) thereof, a speaking that only subject to sub-Section (3) thereof, the provisions of the Act of 2013, rather shall be applicable viz-a-viz those statutory enactments relating to land acquisition, as become specified in the Fourth Schedule.

"105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.–

(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall

> *apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.*
>
> *(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament."*

12. Therefore, unless in sub-Section (3) of Section 105 of the Act of 2013, thus occur speakings therein, thereby making workable all the provisions of the Act of 2013, and/or thus echoings are forthcoming thereins, but revealing that the provisions of Chapter II (supra), as carried in the Act of 2013, shall also ipso facto apply to the acquisition proceedings, as become launched under the Act of 1956, thereupon Chapter II, as embodied in the Act of 2013, rather would not be applicable to the acquisition proceedings, as become launched under the Act of 1956.

13. In the above regard, a reading of sub-Section (3) of Section 105 of the Act of 2013, does not unfold, that excepting the issuance of notification for determination of compensation, and, as also relating to the preparation of rehabilitation and resettlement schemes, rather therein occurring no voicings, thus magnificatory, that the provisions of Chapter II of the Act of 2013, are ipso facto applicable to the acquisition proceedings, as become launched under the Act of 1956. Resultantly, the notification making the said chapter applicable to the launched acquisition proceedings, thus was required to be drawn, whereas, the same remained undrawn.

Therefore, for want of such notification, the provisions occurring in Chapter II of the Act of 2013, are not applicable to the instant acquisition proceedings.

14. In consequence, there was no necessity for the NHAI to comply with the statutory mandate, as occurs in Chapter II of the Act of 2013, nor there was any peremptory occasion for the NHAI, to prior to its launching the acquisition proceedings, but to get prepared a social impact assessment report, thus by the team of experts. Therefore, any non-preparation of the above report, at the instance of NHAI, prior to its launching acquisition proceedings qua the lands concerned, is neither a gross departure from the statutory provisions (supra), nor thereby the acquisition proceedings can be construed to become vitiated.

15. The learned counsel for the petitioners, though has made a vigorous submission before this Court, that in terms of Section 105, as occurs in the Act of 2013, and, also in terms of the relevant notification, as became issued in terms thereof, a dire necessity arose for the respondents concerned, thus to prepare a resettlement and rehabilitation award. However, he submits, that the above has not been done, thereby the impugned acquisition proceedings, are tainted, and, thus require theirs becoming annulled.

16. Nonetheless, even the above made argument, before this Court, by the learned counsel for the petitioners, is also required to be rejected, thus primarily on the anvil of rejection being made of the submissions (supra), besides also for the reasons to be assigned hereinafter.

17. Though sub-Section (3) of Section 105 of the Act of 2013, and, also the apposite notification, as became issued in terms thereof, do both allude to the drawing(s) of a scheme for rehabilitation and resettlement qua

the families/lands, thus affected by acquisition. However, as spoken in sub-Section (3) of Section 105 of the Act of 2013, provisions whereof are extracted hereinabove, the formulation of the resettlement and rehabilitation scheme, enjoins that, the same be done in terms of the Second and Third Schedule attached to the Act of 2013, besides the notification in the above regard is also required to be issued by the government. Therefore, the said Second and Third Schedule, as become appended to the Act of 2013, require(s) an allusion thereto becoming made. Necessarily for delving into, besides for ensuring a deep analysis thereof, the extraction of the said Schedules, is imperative, as such the said Schedules are *ad verbatim* extracted hereinafter.

The Second Scheduled

Sr. No.	*Elements of Rehabilitation and Resettlement of Entitlements*	*Entitlements/provision*	*Whether provided or not (if provided, details to be given)*
1.	*Provision of housing units in case of displacement*	*(1) If a house is lost in rural areas, a constructed house shall be provided as per the Indira Awas Yojana specifications. If a house is lost in urban areas, a constructed house shall be provided, which will be not less than 50 sq mts in plinth area.* *(2) The benefits listed above shall also be extended to any affected family which is without homestead land and which has been residing in the area continuously for a period of not less than three years preceding the date of notification of the affected area and which has been involuntarily displaced from such area:* *Provided that any such family in urban areas which opts not to take the house offered, shall get a one-time financial assistance for house construction, which shall not be less than one lakh fifty thousand rupees:* *Provided further that if any affected family in rural areas so prefers, the equivalent cost of the house may be offered in lieu of the constructed house:* *Provided also that no family affected by acquisition shall be given more than one*	

		house under the provisions of this Act. *Explanation.–The houses in urban area may, if necessary, be provided in multi-storied building complexes*	
2.	*Land for Land*	*In the case of irrigation project, as far as possible and in lieu of compensation to be paid for land acquired, each affected family owning agricultural land in the affected area and whose land has been acquired or lost, or who has, as a consequence of the acquisition or loss of land, been reduced to the status of a marginal farmer or landless, shall be allotted, in the name of each person included in the records of rights with regard to the affected family, a minimum of one acre of land in the command area of the project for which the land is acquired:* *Provided that in every project those persons losing land and belonging to the Scheduled Castes or the Scheduled Tribes will be provided land equivalent to land acquired or two and a one-half acres, whichever is lower.*	
3.	*Offer for developed land*	*In case the land is acquired for urbanisation purposes, twenty per cent. of the developed land will be reserved and offered to land owning project affected families, in proportion to the area of their land acquired and at a price equal to the cost of acquisition and the cost of development:* *Provided that in case the land owning project affected family wishes to avail of this offer, an equivalent amount will be deducted from the land acquisition compensation package payable to it.*	
4.	*Choice of Annuty or employment`*	*The appropriate Government shall ensure that the affected families are provided with the following options:* *(a) where jobs are created through the project, after providing suitable training and skill development in the required field, make provision for employment at a rate not lower than the minimum wages provided for in any other law for the time being in force, to at least one member per affected family in the project or arrange for a job in such other project as may be required; or* *(b) one time payment of five lakhs rupees per affected family; or* *(c) annuity policies that shall pay not less than two thousand rupees per month per family for twenty years, with appropriate indexation to the Consumer Price Index*	

		for Agricultural Labourers.	
5.	*Subsistence grant for displaced families for a period of one year*	*Each affected family which is displaced from the land acquired shall be given a monthly subsistence allowance equivalent to three thousand rupees per month for a period of one year from the date of award.* *In addition to this amount, the Scheduled Castes and the Scheduled Tribes displaced from Scheduled Areas shall receive an amount equivalent to fifty thousand rupees.* *In case of displacement from the Scheduled Areas, as far as possible, the affected families shall be relocated in a similar ecological zone, so as to preserve the economic opportunities, language, culture and community life of the tribal communities*	
6.	*Transportation cost for displaced families*	*Each affected family which is displaced shall get a onetime financial assistance of fifty thousand rupees as transportation cost for shifting of the family, building materials, belongings and cattle.*	
7.	*Cattle shed/petty shops cost*	*Each affected family having cattle or having a petty shop shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty five thousand rupees for construction of cattle shed or petty shop as the case may be.*	
8.	*One time grant to artisan, small traders and certain others*	*Each affected family of an artisan, small trader or self-employed person or an affected family which owned non agricultural land or commercial, industrial or institutional structure in the affected area, and which has been involuntarily displaced from the affected area due to land acquisition, shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty-five thousand rupees.*	
9.	*Fishing rights*	*In cases of irrigation or hydel projects, the affected families may be allowed fishing rights in the reservoirs, in such manner as may be prescribed by the appropriate Government.*	
10.	*One-time Resettlement Allowance*	*Each affected family shall be given a one-time "Resettlement Allowance" of fifty thousand rupees only*	
11.	*Stamp duty and registration fee*	*(1) The stamp duty and other fees payable for registration of the land or*	

		house allotted to the affected families shall be borne by the Requiring Body. (2) The land for house allotted to the affected families shall be free from all encumbrances. (3) The land or house allotted may be in the joint names of wife and husband of the affected family.	

The Third Schedule

Sr. No.	***Component of infrastructure amenities provided/proposed to be provided by the acquirer of land***	***Details of infrastructure amenities provided by the acquirer of land.***
1.	*Roads within the resettled villages and an all-weather road link to the nearest pucca road, passages and easement rights for all the resettled families be adequately arranged.*	
2.	*Proper drainage as well as sanitation plans executed before physical resettlement.*	
3.	*One or more assured sources of safe drinking water for each family as per the norms prescribed by the Government of India.*	
4.	*Provision of drinking water for cattle.*	
5.	*Grazing land as per proportion acceptable in the State.*	
6.	*A reasonable number of Fair Price Shops.*	
7.	*Panchayat Ghars, as appropriate.*	
8.	*Village level Post Offices, as appropriate, with facilities for opening saving accounts.*	
9.	*Appropriate seed-cum-fertilizer storage facility if needed.*	
10.	*Efforts must be made to provide basic irrigation facilities to the agricultural land allocated to the resettled families if not from the irrigation project, then by developing a cooperative or under some Government scheme or special assistance.*	
11.	*All new villages established for resettlement of the displaced persons shall be provided with suitable transport facility which must include public transport facilities through local bus services with the nearby growth centres/urban localities.*	
12.	*Burial or cremation ground, depending on the caste-communities at the site and their practices.*	
13.	*Facilities for sanitation, including individual toilet points.*	
14.	*Individual single electric connections (or connection through nonconventional sources of energy like solar energy), for each household and for public lighting.*	
15.	*Anganwadi's providing child and mother supplemental nutritional services.*	

16.	*School as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009);*	
17.	*Sub-health centre within two kilometres range.*	
18.	*Primary Health Centre as prescribed by the Government of India.*	
19.	*Playground for children.*	
20.	*One community centre for every hundred families.*	
21.	*Places of worship and chowpal/tree platform for every fifty families for community assembly, of numbers and dimensions consonant with the affected area.*	
22.	*Separate land must be earmarked for traditional tribal institutions.*	
23.	*The forest dweller families must be provided, where possible, with their forest rights on non-timber forest produce and common property resources, if available close to the new place of settlement and, in case any such family can continue their access or entry to such forest or common property in the area close to the place of eviction, they must continue to enjoy their earlier rights to the aforesaid sources of livelihood.*	
24	*Appropriate security arrangements must be provided for the settlement, if needed.*	
25.	*Veterinary service centre as per norms.*	

18. The words occurring in the opening of the Second Schedule, thus making bespeakings, about the elements of rehabilitation and resettlement entitlements, for all the affected families, which may be both the land owners or the families whose livelihood is primarily dependent on the acquired lands. The emphatic statutory coinage which occurs in the Second Schedule, is “affected families”. The said “affected families” would be both the land owners, and, also the families whose livelihood is primarily dependent on the acquired lands. In addition, apart from the monetary compensation being awarded for the acquired lands, rather the Second Schedule attached to the Act of 2013, also makes it peremptory, upon the authority concerned, to in respect of the affected families also draw a scheme for rehabilitation and resettlement.

19. Though, the petitioners claim the benefits of the above Schedule, but they have not been able to plead nor prove, that as a result of acquisition, they have lost their house, nor they have been able to prove, that as a sequel of acquisition of their entire land, whereons, they were dependent for their livelihood, thereby they become an affected family. Therefore, nor thereby a dire statutory necessity, became cast, upon the respondent concerned, to prepare or draw resettlement or rehabilitation scheme, nor thus became intentionally abandoned. Resultantly, the petitioners cannot entail, upon, the NHAI, any inference that for non preparing of any resettlement or rehabilitation scheme qua thereby, the entire launched acquisition proceedings are vitiated.

20. It also appears, that the leverage qua assigning the benefit of the above statutory provision to the petitioners, and, also the assigning to them of the benefits of the Schedules appended with the Act of 2013, rather would well ensue, thus to the petitioners, only when there was evident displacement or evident deprivation of livelihood to them, whereupon alone they would become "affected family". In the above regard, there were to be compatible therewith pleadings, and, also compatible thereto evidence, was required to be adduced. However, the above evidence is amiss, therefore, the above raised claim cannot become assigned to the petitioners.

21. The learned counsel for the petitioners further argues, that since the acquisition of the estate of the present petitioners, whereons, their brick-kiln was existing, thus has resulted in the closure of brick-kiln whereby there is a concomitant loss of livelihood to them. Resultantly, he argues that the present petitioners become an affected family, and, thereby Rehabilitation and Resettlement Scheme was required to be prepared by the respondent concerned.

22. In the above regard, it is relevant to mention here that the brick-kiln existing on the acquired estates of the petitioners, thus entitled the petitioners to continue the manufacturing of bricks at the brick-kiln, but subject to a valid licence becoming accorded to them. However, the valid licence to operate the brick-kiln survived in contemporaneity to the issuance of the notification of acquisition, thereafters there was no leverage in the present petitioners to manufacture bricks at the brick-kiln concerned, nor thereby there would be loss of any business therefroms rather to the present petitioners. Moreover, the petitioners would not become the affected family, nor the resettlement, and, rehabilitation scheme was required to be formulated qua them.

23. In the above regard, it is relevant to refer to the trite factum, that the licence to operate the brick-kiln, as revealed by Annexure P-10, became issued under the Punjab control of Bricks Supplies, Price and Distribution Control Order, 1998. Furthermore, from a perusal of the said granted licence to the brick-kiln, it is revealed that the said licence remained alive till 31.3.2014. Thereafter the said licence was renewed on 11.3.2014 by the District Town Planner, Ludhiana uptil 2021. Subsequently, in reference to application diary no. 4429 dated 10.8.2022, the said licence was got renewed by the District Controller, Food Civil Supplies and Consumer Affairs, Ludhiana (West), uptil 30.6.2024 (Annexure P-12). Therefore, when the notifications (supra) became issued respectively on 29.1.2021, and, on 31.5.2021, thus there was, at the stage (supra), no valid licence conferred by the competent authority vis-a-vis the brick-kiln concerned, nor thereby the present petitioners were endowed with any indefeasible right to continue the manufacturing of bricks at the brick-kiln concerned, nor they can contend, that thereby their income, as became generated therefrom became thus

affected.

24. Though the learned counsel for the petitioners made dependence, upon renewal being made to the said valid licence, which but expired on 2021, rather through his making an allusion to Annexure P-12. However, the learned counsel for the petitioners has not been able to place on record any material suggestive, that the renewal, as made to the initially granted licence to the brick-kiln concerned, was so made by an authority, which became assigned the empowerment to make the relevant renewal. Resultantly, the renewal through Annexure P-12 of the expired licence issued to the brick-kiln rather is inconsequential, and/or, the said renewal is deemed to be made by the authority, which had no jurisdiction to cause any renewal of the licence (Annexure P-10).

25. Even otherwise, the prejudicial effect, if any, which may ensue to any affected family, thus on account of acquisition of the land taking place, is to be determined upon the size of the holdings of the estate holders concerned. Moreover, it has also to be made dependent, upon, the indigence or otherwise of the land losers concerned.

26. In addition, the necessity of drawing of a resettlement and rehabilitation scheme, is also for a holistic purpose. A reading of the provisions relating to rehabilitation housing scheme reveals, that the said measure is with a limitation of monetary sums, and, with a limitation of the plinth area of dwelling unit. Therefore, it appears that given the minimal determination of compensation amount in respect of the dwellings, as become acquired, that the resettlement or rehabilitation scheme, in the shape of dwelling units becoming assigned to the affected families, rather becoming contemplated in the Second Schedule. In sequitur, it appears that the financial impoverishment or the indigence of the affected families,

irrespective of monetary compensation being determined, which may be extremely meager or paltry, therebys thus disabling the affected families, to acquire a dwelling unit or a house, thus from such paltry or meager compensation amount, given the exorbitant prices of a dwelling unit, that the provision for such affected families, being provided with a homestead, rather has been contemplated.

27. Furthermore, the provision relating to land for land, and, the provision relating to offer for a percentum of the developed land becoming assigned to the land loser concerned, provision whereof is carried in Second Schedule, especially with restrictions of the area of the land to be allotted to the land losers concerned, thus unfolds a legislative intent, that thereby the affected families have been assigned the benefit thereof, only in the event, qua the compensation determined, being meager or paltry or being insufficient, to the affected families, to therefrom thus acquire lands equivalent in size viz-a-viz the lands, which were put to acquisition. Moreover, though the offer for some percentum of the developed lands to the land losers, appears to be made compatibly qua both those affected families, who despite receiving the compensation, are unable to therefrom acquire land holdings, and, also to those who, from the assessed compensation amount can make acquisition of other land holdings. The reason being, that since upon acquisition of lands, being made, thus for urbanization purposes, thereupon, 20% of the developed land, is made assignable, to the land losers concerned, but the said assignable 20% of the developed land, is in proportion to the acquired lands, besides is subject to the land losers concerned, defraying price or costs equivalent to the cost of acquisition. Consequently, the above is a just, and, fair, besides an egalitarian measure for the land losers, who both may be

indigent/resourceless, and, who may be also financially well empowered. The availment of the said provision but is optional. The apposite financial empowerment of the land losers concerned, as stems from the determined monetary compensation amount qua him, thus makes him resourceful to pay the price equivalent to the developed plot, and, thus enables him to ensure his resettling or rehabilitation. However, the benefit of the statutory provision of land for land, and/or the benefit of the offer for developed land, cannot become assigned to the petitioners, as they have neither staked the said benefit, nor the acquisition of the land has been made for urbanization purposes.

28. The telling effect of the above, is that, the resettlement or rehabilitation scheme, thus required adduction of cogent evidence, displaying that the compensation amount, as becomes determined, is grossly insufficient or inadequate, to ensure therefrom the rehabilitation and resettlement of the affected families. It also appears that in case the compensation amount is adequate or is in a handsome monetary sum, thereby when such a land loser concerned, can make therefrom acquisition of land holdings or acquisition of other estates whereby, he may become resettled or rehabilitated. Resultantly in respect of those land losers concerned, who receive handsome sums of monetary compensation qua the acquired lands, it appears that they may not choose to insist upon the statutory authority concerned, to draw qua them any scheme for resettlement or rehabilitation.

29. Even if the above statutory leverage was assumingly assignable to the petitioners, thereby, they were required to be well contending before the authority concerned, that too in the apposite objections, as raised before the authority concerned, qua irrespective of the size of the monetary

compensation, as became determined qua them, yet given the exorbitant price of lands, they became disabled to make fresh acquisitions therefrom. Thereupon, they could well contend before the authority concerned, to may be, if permissible under the relevant schedule, thus draw a scheme for resettlement and rehabilitation even qua them. However, the petitioners did not chose to do so, thereby they are estopped from contending that the authority concerned departed from drawings of resettlement and rehabilitation scheme qua them.

30. The learned counsel for the petitioners submits, that vis-a-vis the project at hand, no environment clearance has been obtained, thereby for want of according of environment clearance to the project at hand, thereby the acquisition made for the relevant public purpose is required to be faulted.

31. However, the above made submission does not hold any vigour. The reason is premised on the ground, that qua the issue relating to prior environment clearance as per notification dated 14.9.2006 (Annexure P-18), the Ministry of Environment and Forests, thus constituted a High-Level Committee to review the provisions of Environmental Impact Assessment Notification, 2006. In sequel whereof, the High Level Committee, as revealed by a notification dated 22.8.2013 (Annexure R-3/2) rather recommended, that the environment clearance is required for expansion of National Highway projects, spanning above 100 kilometers, but is not required when the span of the relevant project undertaken by the National Highway Authority of India, is less than 100 kilometers. Consequently, when the span of the project at hand is less than 100 kilometers, thereby in terms of the notification the requisite environment clearance was not required to be obtained by the respondent concerned.

32. Lastly, the learned counsel for the petitioners submits, that neither just, nor adequate compensation became assessed vis-a-vis the petitioners, nor any compensation became assessed in respect of loss of business/goodwill. However, from a perusal of the Award (Annexure P-3), it is clear that a compensation in the sum of Rs. 29,96,54,705/- became assessed with respect to village Paddi. Subsequently, vide order dated 4.10.2023, award for structures of village Paddi in the tune of Rs. 2,47,74,322/- was determined by the competent authority concerned.

33. Though, the learned counsel for the petitioners submits, that objections in respect of the above became raised before the authority concerned, but yet no reasoned decision being made on the said objections.

34. However, it is clear from a reading of reply on affidavit, furnished to the instant petition, that all the objections, as became raised by the present petitioners were dismissed through a valid speaking order. Therefore, the above argument raised before this Court, by the learned counsel for the petitioners, that the objections were not decided through a speaking decision, becomes rudderless, and, is rejected.

35. Moreover, since the remedy of arbitration is amenable to become recoursed by the petitioners, to thus ventilate their grievances relating to under assessment or deficit compensation becoming assessed vis-a-vis the acquired estates of the petitioners, thereby given the availability of the above statutory remedy to the petitioners, thereby this Court does not deem it fit, and, appropriate to either make any adjudication with respect to the above facet nor also this Court deems it fit, and, appropriate to, on the above premise, thus proceed to quash the acquisition proceedings. Contrarily, this Court reserves liberty to the petitioners to access the alternative statutory remedy of arbitration, thus for theirs ventilating their

grievance relating to deficit or unreasonable compensation becoming assessed by the competent authority vis-a-vis their acquired estates. The said remedy, if barred by limitation, can yet be accessed by the petitioners through theirs claiming the benefit of Section 14 of the Limitation Act.

Final Order

36. In consequence, this Court finds no merit in the instant petition and is constrained to dismiss it. Accordingly, the instant petition is dismissed. The impugned notifications, and, award are maintained and affirmed.

37. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

February 29, 2024
Gurpreet

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