

2025.PHHC:033722



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(107)

FAO-5790-2024 (O&M)
Decided on : 10.03.2025

Rekha Devi

.....Appellant(s)

Versus

Union of India & others

.....Respondent(s)

CORAM : HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.Manoj Pundir, Advocate, for the appellant.

Ms.Promila Nain, Senior Panel Counsel, for respondent-UOI.

Mr.Samarth Sagar, Advocate, for respondent No.2-NHAI.

LAPITA BANERJI, J. (Oral)

CM-22111-CII-2024

This is an application for condonation of delay of 2 days in filing the appeal.

Perused the grounds.

Such grounds are found sufficient.

Application is allowed and delay of 2 days in filing the appeal is condoned.

FAO-5790-2024 (O&M)

1. Challenge in the present appeal is to the judgment and order dated July 4, 2024 passed by the Addl.District Judge, Jalandhar whereby the

Learned District Judge had set-aside the award dated December 15, 2020 (Annexure A-1) passed by the Learned Arbitrator whereby the compensation granted to the land-loser was enhanced from Rs.30,000/- per marla to Rs.1.15 lakhs per marla. The Learned Addl.District Judge proceeded on the basis that the Learned Arbitrator misdirected himself by enhancing the compensation of the acquired land by about four times and allowing compensation @ Rs.1,15,000/- per marla (Rs.1.84 crores per acre) relying on the judgments rendered by a Co-ordinate Bench of this Hon'ble High Court in ***Union of India & another Vs. M/s Abhinav Cotspin Ltd. & others (FAO-1158-2015)*** and ***Union of India & another Vs. M/s R.C.Ice Factory & others (FAO-8013-2014)*** decided on August 10, 2016.

2. Vide the impugned judgment, Learned Addl.District Judge held that in the aforesaid judgments rendered by the Co-ordinate Bench in ***M/s Abhinav Cotspin Ltd. (supra)*** and ***M/s R.C. Ice Factory (supra)***, there was only discussion with regard to enhancement made in respect to *commercial* land to the tune of Rs.1,50,000/- per marla and Rs.1,30,000/- per marla for *residential* land. There was no discussion in respect to enhancement to the tune of Rs.1,15,000/- per marla in respect of *Chahi/agricultural* land. Therefore, the Learned Arbitrator misdirected himself by relying on the aforesaid judgments of the High Court in coming to the finding that once the rate for the same village in respect to *agricultural* land was determined by the High Court, there was no cogent reason for him to determine a different rate per marla for *agricultural/Chahi* land situated in the same village.

3. Furthermore, it was held in the award that since there was no structure on the said land in question, therefore, the land-losers could not substantiate their contention that the land acquired was *commercial* in

nature. The land-losers were only entitled to the enhanced compensation as approved by the High Court in respect of *Chahi* land.

4. Hence, the award was set-aside and the proceedings were remanded back to the Learned Arbitrator to adjudicate the dispute between the parties and make a fresh decision within a period of 6 months from the date of the order.

5. Learned counsel appearing on behalf of the appellant submits that Learned Addl.District Judge misdirected himself by setting aside the arbitral award and remanding it back to the Learned Arbitrator for a fresh decision in the matter.

6. He relies on a judgment passed by a Three Judge Bench of Hon'ble Supreme Court in ***Kinnari Mallick & another Vs. Ghanshyam Das Damani, 2017 INSC 1281 : 2018 (11) SCC 328*** in support of his contention.

7. On merits, he submits that the Learned Addl.District Judge erroneously held that there was no finding of the Co-ordinate Bench of this Court in respect of *Chahi* land. Four appeals were taken-up together and the facts were discussed from FAO-1158-2015 ***M/s Abhinav Cotspin Ltd. (supra)*** and FAO-8013-2014 ***M/s R.C. Ice Factory (supra)***. Even though the appeal i.e. FAO-3746-2015 ***Union of India & another Vs. Parshan Kaur & others*** was allowed, the facts of that case was not discussed by the Co-ordinate Bench. He draws the attention of this Court to the award dated June 22, 2013 passed by the Learned Arbitrator in MA 15 of 2011 (***Parshan Kaur & others Vs. Union of India & others***). The Learned Arbitrator in the case of ***Parshan Kaur (supra)***, awarded compensation of Rs.1,50,000/- per marla for *commercial* land, Rs.1,30,000/- per marla for *residential* land and Rs.1,15,000/- per marla for *agricultural* land. The said award was

Learned Arbitrator in respect of the compensation qua the *agricultural* land was upheld.

8. He submits that even though there was no specific mention of *agricultural* land was made in the order passed by the Co-ordinate Bench on August 10, 2016 as the facts were taken from *M/s Abhinav Cotspin (supra)* but since the award of *Parshan Kaur (supra)* was challenged and the same was not interfered with, with respect to the compensation element, the compensation granted in respect of *agricultural* land was upheld.

9. The order passed by the Co-ordinate Bench of this Court was challenged by the Union of India in CA No.7064/2019 before the Supreme Court. The said appeal was heard alongwith several other Civil Appeals including CA No.7102/2019. The said CA No.7102/2019 was an appeal from the order passed by the Co-ordinate Bench in FAO-3746-2015 Parshan Kaur (supra). Therefore, the compensation awarded by the Learned Arbitrator in respect of *agricultural/Chahi* land was upheld by this High Court and subsequently, by the Hon'ble Supreme Court.

10. Therefore, there was no plausible reason for the Learned Addl.District Judge to come to the finding that the enhanced compensation only with regard to the *commercial* land and *residential* land was upheld by the Hon'ble High Court and the Learned Arbitrator misdirected himself by holding that the enhancement of compensation in respect of *agricultural* land was also upheld by the High Court.

11. Issue notice in the appeal.

12. Ms.Promila Nain, Senior Panel Counsel accepts notice on behalf of respondent No.1-UOI and Mr.Samarth Sagar, Advocate accepts notice on behalf of respondent No.2-NHAI.

13. Learned counsel appearing on behalf of respondent No.2-NHAI contends that there is no finding by the High Court with regard to the enhancement of compensation in respect of *agricultural* land. Furthermore, no reliance could be placed by the appellant on the judgment/order passed by the Co-ordinate Bench in FAO-758-2018 (***Randhir Singh & others Vs. Union of India & others***) decided on 20.03.2018 since compensation in respect of *agricultural* land therein was upheld by the Co-ordinate Bench due to the concession given by respondent Nos.1 & 2 as he had submitted that he had no objection to the rates of enhanced compensation payable as in ***Parshan Kaur's case (supra)***. Therefore, ***Randhir Singh's case (supra)*** could not be relied upon for enhancement of compensation.

14. He had, however, fairly conceded that in view of the settled position of law, the learned Addl.District Judge could not have remanded the case back to the learned Arbitrator for arriving at a fresh decision in the matter.

15. He also submits that since the notifications are of different dates for acquiring the land, therefore, the principles applicable to ***Parshan Kaur's case (supra)*** is not applicable to the present case. He submits that since the notifications are different, the learned Arbitrator was under an obligation to consider the parameters under Section 3-G (5) of National Highways Act, 1956 (for short, the '1956 Act') again while adjudicating the claim of the land-loser/appellant.

16. This Court has considered the rival submissions of the parties and perused the material on record. It appears from the judgment passed in ***Kinnari Mallick (supra)*** that under Section 34 of Arbitration & Conciliation Act, 1996 (for short, '1996 Act'), only two sets of powers have been

aside only on the grounds mentioned therein. Under Section 34(4) of the 1996 Act, the Court deciding the application under Section 34, could adjourn the proceedings for a period of time determined by it in order to give the arbitral Tribunal an opportunity to resume the arbitral proceedings after eliminating the grounds for setting aside the award till such time the arbitral award was set-aside by the Court adjudicating the application under Section 34. Admittedly, the award has already been set-aside by the learned Addl.District Judge without directing the Arbitrator to remove the grounds for challenge and therefore, the question of taking recourse to Section 34(4) of the 1996 Act does not and cannot arise in the circumstances. This Court also took a view on January 15, 2025 in FAO No.5266 of 2024 that there was no power under the statute vesting with the Court hearing Section 34 application to remand the proceedings back to the learned Arbitrator for a fresh decision.

17. Therefore, on the issue whether the learned Addl.District Judge could have remanded the matter back to the learned Arbitrator, this Court is of the view that there was no such power lies with the learned Addl.District Judge.

18. On merits, the issue is whether the enhancement of compensation to the tune of Rs.1,15,000/- per marla in respect of *agricultural/Chahi* land was perversely awarded.

19. Even though it has been argued that the two notifications under which land was sought to be acquired were different, nothing has been brought on record to show that the text of the two notifications were distinct and different. No document has been produced before this Court showing that District Collector's rates have reduced in respect of the land on a later

respect of *agricultural* land should be granted than in earlier acquisition proceedings.

20. Upon perusal of the order dated August 10, 2016 in FAO No.1158 of 2015, it transpires that the compensation awarded to ***Parshan Kaur (supra)*** was challenged by the Union of India in FAO-3746-2015 and the said compensation awarded to ***Parshan Kaur (supra)*** was not upheld by the Co-ordinate Bench relying upon any concession given by the counsel for the appellants. The later order/judgment passed by the Co-ordinate Bench on March 20, 2018 in FAO No.758 of 2018 may have referred to a concession given by the learned counsel appearing on behalf of the NHAI and Union of India in respect of the rates payable in ***Parshan Kaur's case (supra)*** but the primary case, when decided, was not on the basis of any concession given by the counsel for the parties. The award of the Arbitrator was upheld without any concession. Therefore, this Court finds no merit in the submission that neither the enhancement with regard to *agricultural* land was considered by the order dated August 10, 2016 nor the submission that the rates in ***Parshan Kaur's case (supra)*** was awarded to ***Randhir Singh's case (supra)*** on the basis of concession.

21. The next contention is with regard to the parameters not having been considered as stipulated under Section 3-G (7) of the 1956 Act.

22. This Court sees no reason as to why the learned Arbitrator was required to differ from the rate of compensation that has been upheld till the Hon'ble Supreme Court. In the event the learned Arbitrator modified/enhanced the amount of compensation, he would have to corroborate his finding relying on the factors stipulated in Section 3-G (7) of the 1956 Act.

23. Learned counsel for the respondent-Authority has also

additional compensation could not be granted under Section 23(1-A) of the Land Acquisition Act, 1894, by relying on the order passed by the Hon’ble Supreme Court in Misc.Application Diary No.2572 of 2020 in the case of *National Highway Authority of India Vs. Tehal Singh & others*.

24. This Court agrees with such submission made by the learned counsel appearing for the respondent-Authority.

25. In the light of the aforesaid discussion, the impugned judgment dated July 4, 2024, passed by the learned Addl.District Judge, Jalandhar is, set-aside. As the appellant is only claiming parity by relying on the decision of *Parshan Kaur’s case (supra)*, the National Highways Authority of India-respondent No.2 is directed to pay the enhanced amount of compensation including any other statutory benefits, directly in the account of the landowner/appellant, within a period of 2 months from the date of this order excluding the amount granted under Section 23(1-A) of the 1894 Act.

26. With the directions aforesaid, FAO-5790-2024 is **disposed of**.

27. Pending application(s), if any, are accordingly, disposed of.

March 10, 2025
sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No