

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No.10552 of 2021(O&M)

Date of decision:12.10.2021

Manjit Singh and others

...Petitioners

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Charanpal Singh Bagri, Advocate  
for the petitioners.

Mr. R.S.Madan, Advocate,  
for the NHAI.

ANIL KSHETARPAL, J.

Although, the learned counsels representing the parties have been heard at length, however, keeping in view the questions involved, it is considered appropriate to keep the writ petition pending till the Union of India as well as the concerned competent authority file their respective reply to the petition. However, for the purpose of interim order, the matter is being adjudicated.

Shorn off details, it is important to note that the properties of the petitioners have been acquired by the Union of India in exercise of powers under the National Highway Act, 1956 (hereinafter referred to as 'the 1956 Act'). With regard to the plot/land, the competent authority announced the award on 06.08.2020, whereas the award with regard to the super structure was announced on 16.06.2021. The amount found payable to the

landowners as per the supplementary award for super structure has been deposited with the competent authority for land acquisition, on 10.08.2021.

On 31.05.2021, when the writ petition came up for preliminary hearing, the following order was passed:-

*“Counsel for the petitioners herein inter alia would contend that the competent authority under the National Highway Act has only passed an award pertaining to the land, but has not passed any award pertaining to the structure and has not complied with the provisions contained in Sections 31, 32 and 38 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is contended that the respondents are threatening to dispossess the petitioners herein.*

*Notice of motion for 10.11.2021.*

*In the meantime, dispossession of the petitioners herein is stayed.”*

The following questions arise for consideration:-

- (i) Whether it is appropriate to continue with the interim protection which is an impediment in the progress of an infrastructural project i.e. construction/widening of National Highway merely because an independent award with respect to the rehabilitation and resettlement of the petitioners as envisaged under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'RFCTLARR Act 2013') has not been passed yet, with respect to the acquisition of the property under the 1956 Act?

- (ii) Whether Section 38 of the RFCTLARR Act 2013 is applicable to the acquisition of the land/property under the 1956 Act?
- (iii) Whether the competent authority for land acquisition appointed under the 1956 Act is required to pass an award for rehabilitation and resettlement of the owners who stand deprived of their property on account of its compulsory acquisition under the 1956 Act?

In order to utilize the land/property for construction (widening/paved shoulders with 2/4 laning etc), maintenance, management and operation of the National Highway No.5, the properties of the petitioners were acquired. Originally, the petitioners claim that no award with regard to the super structure has been passed. It is only after the respondents have filed their reply, now, it has been admitted by the petitioners and is undisputed that the supplementary award with regard to the super structure has been announced on 16.06.2021 and the amount payable to the owners stands deposited with the competent authority on 10.08.2021.

The learned counsel representing the petitioners, while referring to Section 38 of the RFCTLARR Act 2013, contends that the possession of the land/property cannot be taken without passing of the award and ensuring that the payment/benefits thereunder have been paid to the landowners. Section 38 of the RFCTLARR Act 2013, is extracted as under:-

**38. Power to take possession of land to be acquired.-(1)**  
*The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three*

*months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30:*

*Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award:*

*Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands acquired.*

*(2) The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.”*

The learned counsel, on reading of the aforesaid provision, contends that the Collector can take the possession of the land only after ensuring that full payment of the compensation has been paid to the persons entitled thereto as well as the rehabilitation and resettlement of such persons has been completed. He submits that in the absence of the aforesaid payment, the Collector has no power to take the possession.

Per contra, the learned counsel representing the National Highways Authority contends that the 1956 Act is a complete code. He submits that since the 1956 Act is a special law, whereas RFCTLARR Act 2013 is a general law, therefore, the special law will prevail. While drawing the attention of the court to Section 103, 105 of the RFCTLARR Act 2013, he submits that the 1956 Act is included in Schedule IV and therefore, the

provisions of the RFCTLARR Act 2013 will not be applicable to the 1956 Act in its entirety. He further submits that the authorities are entitled to take possession of the acquired property under section 3E of the National Highways Act, 1956, which is extracted as under:-

*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 person 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 by it.*

It is noted here that Section 103 of the RFCTLARR Act 2013, provides that the provisions of the RFCTLARR Act 2013 shall be in addition to and not in derogation of, any other law for the time being in

force. Section 105 of the RFCTLARR Act 2013 provides that the provisions of the RFCTLARR Act 2013 will not apply in certain cases or to apply with certain modifications in certain situations. Section 103 and 105 are extracted as under:-

**“103. Provisions to be in addition to existing laws.—***The provisions of this Act shall be in addition to and not in derogation of, any other law for the time being in force.*

104. XX XX XX XX.

**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.”*

In the beginning, the 1956 Act did not provide for acquisition of the land. However, by Act No.16 of 1997 with effect from 24.01.1997, Section 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I and 3J were added so as to enable the Union of India to acquire the land for public purposes expeditiously. It is also significant to note that as per Section 3(J), the Land Acquisition Act No.1 of 1894 shall not apply to the acquisition under the 1956 Act. This provision has been quashed by the Supreme Court in **Union of India and another vs. Tarsem Singh and others (2019) 9 SCC, 304**, while upholding the judgment of the Division Bench in **Golden Iron and Steel Forging vs. Union of India, 2008 SCC online P&H, 498**. However, it has been declared that for determining the amount of compensation, certain provisions of the Land Acquisition Act, 1894, shall be applicable. However, such declaration is only to the extent of applicability of Section 23(2) and 28 of the Land Acquisition Act, 1894. The Land Acquisition Act, 1894 has been repealed and substituted by the RFCTLARR

Act 2013. The 1956 Act is included at Sr. No.7 in the 4<sup>th</sup> Schedule of the RFCTLARR Act 2013. The Union of India has notified that the landowners shall be entitled to the benefits available to the landowners relating to the determination of compensation in accordance with the 1st Schedule, rehabilitation and resettlement in accordance with the 2<sup>nd</sup> Schedule and infrastructural amenities in accordance with the 3<sup>rd</sup> Schedule in all the cases of land acquisition under the enactments specified in the 4<sup>th</sup> Schedule of the RFCTLARR Act 2013. The aforesaid order was issued by the Ministry of Rural Development, on 28.08.2015, which is extracted as under:-

*"MINISTRY OF RURAL DEVELOPMENT  
ORDER*

*New Delhi, the 28th August, 2015*

*S.O.2368(E) - Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to Date of Judgment: 16-04-2018 W.P.Nos.6466-6496/2017 C/W W.P.Nos.1443-1444/2017 Sri. G.C. Thippeswamy & others Vs. The Union of India & others as the RFCTLARR Act) came into effect from 1st January, 2014;*

*And whereas, sub-section(3) of Section 105 of the RFCTLARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act.*

*And whereas, the notification envisaged under sub-section (3) of Section 105 of the RFCTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance,*

*2014 (9 of 2014) was promulgated on 31st December, 2014, thereby, inter-alia amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments Date of Judgment: 16-04-2018 W.P.Nos.6466-6496/2017 C/W W.P.Nos.1443-1444/2017 Sri. G.C. Thippeswamy & others Vs. The Union of India & others specified in the Fourth Schedule to the RFCTLARR Act;*

*And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3rd April, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;*

*And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30th May, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015);*

*And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;*

*As whereas, as per the provisions of [article 123](#) of the Constitution, the RFCTLARR Date of Judgment: 16-04-2018 W.P.Nos.6466-6496/2017 C/W W.P.Nos.1443-1444/2017 Sri. G.C. Thippeswamy & others Vs. The Union of India & others (Amendment) Second Ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the land owners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under*



*the 13 Acts specified in the Fourth Schedule to the RFCTLARR Act as extended to the land owners under the said Ordinance;*

*And whereas, the Central Government considers it necessary to extend the benefits available to the land owners under the RFCTLARR Act to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule: and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and Date of Judgment: 16-04-2018 W.P.Nos.6466-6496/2017 C/W W.P.Nos.1443-1444/2017 Sri. G.C. Thippeswamy & others Vs. The Union of India & others rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners;*

*Now, therefore, in exercise of the powers conferred by sub-section (1) of [Section 113](#) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:-*

- 1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.*
- (2) It shall come into force with effect from the 1st day of September, 2015.*
- 2. The provisions of the Right to Fair Compensation and*

*Transparency in Land Date of Judgment: 16-04-2018  
W.P.Nos.6466-6496/2017 C/W W.P.Nos.1443-1444/2017  
Sri. G.C. Thippeswamy & others Vs. The Union of India  
& others Acquisition, Rehabilitation and Resettlement  
Act, 2013, relating to the determination of compensation  
in accordance with the First Schedule, rehabilitation and  
resettlement in accordance with the Second Schedule and  
infrastructure amenities in accordance with the Third  
Schedule shall apply to all cases of land acquisition  
under the enactments specified in the Fourth Schedule to  
the said Act.*

Sd/-

(F.No.13011/01/2014-LRD)

K.P.KRISHNAN, Addl. Secy."

Thus, it is apparent that to a limited extent, the provisions of the RFCTLARR Act, 2013 have been made applicable to the 1956 Act. However, the question remains whether Section 38 of the RFCTLARR Act 2013 shall be applicable to the acquisition of the land under the 1956 Act. In the considered view of this Court, the answer to the aforesaid question has to be in negative. The 1956 Act and the RFCTLARR Act 2013 are two independent enactments operating in their respective fields. As per the notification issued by the Union of India on 28.08.2015, which has been extracted above, it is apparent that the decision is only to extend the benefits relating to the determination of compensation, rehabilitation and resettlement in accordance with the 2<sup>nd</sup> Schedule. Vide notification dated 28.08.2015, the Central Government cannot be said to have rendered Section 3(E) otiose. Thus, the Central Government has the power to take the possession under the 1956 Act after complying with the requirements of

Section 3E of the Act. Hence, in the considered opinion of this Court, it is not appropriate to stall the work of widening the national highway any further.

Moreover, it may be noted here that the Central Government has carried out substantive amendments in the Specific Relief Act, 1963, prohibiting the Civil Courts from granting injunctions which adversely affects the progress of infrastructural projects. Furthermore, the petitioners at the most, are entitled to compensation for their resettlement and rehabilitation. The Court can monitor and regulate the same. The Court is also entitled to direct the Union of India or the national Highway Authority or the competent authority to comply with the requirement of the notification dated 28.08.2015. However, it is not considered appropriate to allow the public interest to suffer as a consequence of such an order.

There is another aspect of the matter which is required to be noticed.

The learned counsel representing the petitioners had also filed CWP No.27641 of 2018, on behalf of various other landowners. The Division Bench on 14.12.2018, after considering the matter found that no restraining order can be passed in the facts and circumstances of the given case. However, while filing the present writ petition, on behalf of some other writ petitioners, the same learned counsel has failed to bring to the notice of the Court the aforesaid order. It may be noted here that a person practicing law is required to maintain a higher ethical conduct. The legal profession is not a business or trade but it is a Nobel profession. The advocates are officers of the Court. They are required to be scrupulously honest and fair not only with the litigants they represent but also with the Court. No

lawyer/advocate should attempt to mislead or conceal material facts or information from the Court. The advocates are entitled to certain privileges being the officers of the court but in the same breath, they are required to maintain highest standard of integrity while dealing with the court and the litigants they represent.

In the aforesaid circumstances, it is expected from the learned counsel to disclose correct facts before the court even if those facts are not in the knowledge of the petitioners or even if they are unfavourable to the case of the party he/she represents. Once the advocate is in knowledge of those facts, he is expected to disclose those facts.

Keeping in view the aforesaid facts, question no.1 and 2, framed in the opening part of the order, are answered against the petitioners. The writ petition with regard to question no.3 is kept pending.

List on the date already fixed i.e. 10.11.2021.

12<sup>th</sup> October, 2021  
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सत्यमेव जयते (ANIL KSHETARPAL)  
JUDGE