In the High Court of Punjab and Haryana at Chandigarh

CWP No. 28804 of 2022 (O&M)
Reserved on : 26.7.2023
Date of Decision: 06.9.2023

Ashok Kumar Garg .....Petitioner

Versus

Union of India and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Charanpal S, Bagri, Advocate and
Dr. Gurjit Kaur Bagri, Advocate for the petitioner.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Ashish Rawal, Advocate
for the respondent-UOI.

Mr. R.S.Madan, Advocate for respondents No. 3 and 4.

Mr. Maninder Singh, DAG, Punjab.

Mr. Gaurav Deep Goyal, Advocate for
Mr. K.S.Kang, Advocate for the respondent-NHAI.

****

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioner asks for assigning the hereinafter reliefs:-

(a) To release 100% compensation awarded by Competent Authority for Land Acquisition-cum-DRO, Ludhiana vide Award No. 69 dated 27.09.2021 immediately without any delay or laches.

(b) To pay to the petitioner at least 18% interest on the amount of compensation from the date of award to the actual date of payment.

(c) To pass the supplementary award for land providing the

remaining part of compensation to be assessed strictly in view of section 26 to 30 and First Schedule of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013).

(d) To pass the award for structures strictly in view of section 26 to 30 and First Schedule of the Act of 2013, on getting the assessment made by a Central or State Govt. official/agency.

(e) To pass the R&R Award providing benefits and entitlements enshrined under Second and Third Schedule and section 31, 32, 38 and 105(3) of the Act of 2013.

(f) To provide the compensation, all benefits and entitlements to the petitioner, as provided to the similar situated persons affected by the acquisition of their land and properties for construction of certain other National Highways namely NH-707 Poanta Sahib-Gumma-Fediz, NH-70 Hamirpur-Mandi, NH-15 Ras-Beawar-Mandal, NH-516E Bowdara-Vizianagram, NH-516E Paderu-Araku, NH-516E Koyyuru-Paderu, NH-730Ć & NH-731K Bewar-Pilibhit, NH-92 Bewar-Etawah projects, on the ground of parity.

(g) To issue a notification to exempt the unacquired portion of land of petitioner adjacent to proposed road from the purview of restrictions or requirement of "No Construction Zone" of 30 meters or provide adequate amount of compensation for the land which has rendered unusable due to these No Construction Zone restrictions.

(h) Provide adequate amount of compensation for the land

and structures which are not subject matter of acquisition, but are adversely affected due to this acquisition.

(i) Provide service lane/road, for access to and from the property left unacquired.

Factual Background

2. On 25.11.2020, a notification under Section 3-A of the National Highways Act, 1956 (for short 'the Act of 1956') (Annexure P-1) became issued. The said notification was meant for acquiring the land for National Highway No. 205K Ludhiana-Rupnagar Section. The petition land is comprised in khasra No. 26//22 (0.1391), and, khasra No. 26//23/1 (0.0202). After the issuance of the said notification, the petitioner filed objections under Section 3-C of the Act of 1956. Subsequently, on 15.4.2021, a notification under Section 3-D of the Act of 1956, became issued but after making a decision, upon the objections, as became filed under Section 3-C of the Act of 1956 by the petitioner. Thereafter, the petitioner again filed objections under Section 3-C of the Act of 1956, and the said objections were again dismissed on 9.9.2021, thus by the competent authority concerned. On 27.9.2021 (Annexure P-3), an award was made in respect of the acquired lands, by the competent authority concerned.

3. However, the award (supra) became challenged by the National Highway Authority of India (for short '*NHAI*'), thus under Section 3G(5) of the Act of 1956, and, the said challenge is subjudice before the Arbitrator-cum-Divisional Commissioner, Patiala.

4. The contentions, as raised in the instant writ petition for claiming the above espoused reliefs, are rested upon:-

(a) That despite no compensation becoming assessed for the acquired land, and, for structures existing thereins, yet the NHAI

assuming forcible possession, besides also proceeding to demolish the walls skirting the petition lands.

(b) That no Social Impact Assessment report in terms of Sections 4 to 8 of the Act of 2013, becoming prepared, despite the preparation of the said report being a mandatory obligation, upon the respondents concerned, rather to enable the respondents concerned, to undertake lawful acquisitions of the acquired lands. Therefore, it is contended, that the launched acquisition proceedings are vitiated.

(c) That no rehabilitation and resettlement award becoming pronounced. Therefore, the award assessing any monetary compensation qua the acquired lands, is defective, and, is required to be quashed and set aside.

(d) That the objections, and, the claim filed under Section 3C(1) and 3G(3) of the Act of 1956, rather not becoming decided by the competent authority.

5. The NHAI contested the instant writ petition through its instituting a reply thereto. Moreover, the State of Punjab also contested the writ petition by instituting a reply thereto on affidavit. Both the respondents are in alignment qua the instant writ petition meriting dismissal.

Contentions in the reply filed by the respondents

6. In the reply filed by the NHAI to the instant writ petition, it has been contended as under:-

(a) That at the time of launching of acquisition proceedings, the petition land was vacant, and, that there was no boundary wall existing over the disputed khasra numbers, especially at the time of issuance of notification under Section 3-A of the Act of 1956.

(b) That the proceedings qua assumption of possession over the

disputed lands, became initiated in pursuance to an order drawn on 6.11.2022, by the Deputy Commissioner, Patiala (Annexure R-3/8).

(c) That preparation of the Social Impact Assessment report being not required, in view of a verdict made by a Division Bench of this Court in ***CWP No. 10537 of 2021*** titled as ***M/s Sharman Spinning Mills Pvt. Ltd. And others versus Union of India and others.***

(d) That Section 38(1) of the Act of 2013, being not applicable to the acquisition, as made under the Act of 1956, as held by this Court in ***CWP No. 10552 of 2021***, titled as ***Manjit Singh and others versus Union of India and others.***

(e) That for the estate holders concerned, becoming well equipped to stake a claim for the drawing of a rehabilitation and resettlement award, they are enjoined to bring-forth tangible evidence, thus exemplificatory, that they were dependent on the acquired lands, and, that owing to acquisition of their lands, they have become dislocated, and, displaced. It is also contended that since the above is not proven by adduction of cogent evidence, therefore, the above claim becomes a disputed question of fact, and, had to be certified by the competent authority, as per Manual Guidelines dated December 2013, whereas, the said certification not existing on record. Therefore, the above ground is meritless.

(f) That Section 20-A of the Specific Relief Act, 1963, provisions whereof stand extracted hereinafter, prohibits the making of an injunction on infrastructure projects. Therefore, the relief for restraining the respondents from executing the project is misfounded, and, rather is required to be rejected.

> ***20A. Special provisions for contract relating to infrastructure project.***—
> *(1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.*
> *(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.*
> *(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, 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 making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.*

(g) That since the work, as unfolded by Annexure R-3/13, has been awarded to the Contractor, thus for its becoming executed, therefore the public pilot project of the Government of India, is required to become assigned vindication, as on acceptance of the writ petition, the said public project of national importance, would become unavailable for subserving a national public interest.

(h) That the writ petition merits dismissal, as in respect of any deficit compensation being assessed qua the present petitioner, he has an alternative efficacious remedy before the learned Collector concerned, as contemplated under Section 3G(5) of the Act of 1956.

Analysis of the submissions addressed by the learned counsel for the petitioners, and, of the learned counsel for the respondents, and deductions therefrom

First submission of the learned counsel for the petitioner

7. Though the learned counsel for the petitioner has vehemently argued, that prior to the launching of the acquisition proceedings, at the instance of NHAI, there was a dire necessity qua the preparation of the Social Impact Assessment report, whereas, the said Social Impact Assessment report, rather remaining unprepared, thus prior to the launching of the acquisition proceedings, thereby the acquisition proceedings are vitiated, and, thus this Court becoming constrained to quash the notification (supra), and, also the award, as became made in consequence thereof. 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."*

Reasons for rejecting the above submission

8. 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 occur provisions, thus for an appraisal being made of Social Impact Assessment report, as becomes prepared by an expert group.

9. 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."*

10. 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.

11. 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 applicable to the acquisition proceedings, as become

launched under the Act of 1956.

12. 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 prepare a social impact assessment report, 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.

13. In coming to the above conclusion, this Court finds support from a judgment made by a Division Bench of this Court in the case ***M/s Sharman Spinning Mills Pvt. Ltd.*** (supra).

14. Irrespective of the above, despite no social impact assessment report becoming prepared in terms of Chapter 2 of the Act of 2013, yet when the learned counsel for the NHAI, has placed on record the Environmental Clearance Certificate dated 3.6.2022, as became granted to the project concerned, by the Government of India, Ministry of Environment, Forest and Climate Change (Impact Assessment Division), thereby too, the pilot project of national purpose, to be executed by NHAI, thus cannot be said to be violating or breaching any requirement or norms, relating to environmental effects of the apposite project, nor thereby the learned counsel for the petitioner can contend, that the entire acquisition proceedings are vitiated.

Second submission of the learned counsel for the petitioner

15. The learned counsel for the petitioner has also argued, that there was deficit awarding of compensation qua the lands, as became put to

acquisition, therefore, on account of deficit or want of just, and, fair compensation becoming assessed by the authority concerned, he has made a submission before this Court, that the impugned award be quashed and set aside.

Reasons for rejecting the above submission

16. The above argument also cannot be accepted by this Court, as in respect of the above, the petitioner has an alternative remedy, as enshrined in Section 3G(5) of the Act of 1956, thus to seek enhancement of compensation over the monetary sums, as became determined qua the acquired lands, by the authority concerned. In the face of existence of the above alternative remedy, thus for enhancement of compensation being made, or for no compensation being determined with respect to those properties, which also became acquired by the authority concerned, thereby for any deficit or under assessed compensation or for no compensation being determined qua the apposite acquired properties, thus does not become a valid ground to impugn the extantly launched acquisition proceedings.

Third submission of the learned counsel for the petitioner

17. The learned counsel for the petitioner has also argued, that since the full complement of compensation became not determined by the authority concerned, therefore, there was a complete embargo against the assumption of possession over the acquired lands, at the instance of the NHAI.

Reasons for rejecting the above submission

18. However, the above argument also is bereft of vigour. The reason for making the above inference is derived from an analysis of the provisions as carried in Sections 3(G) and 3(H) of the Act of 1956,

provisions whereof become extracted hereinafter.

> *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 sub-section (1), for that land. (3) Before proceeding to determine the amount under sub-section (1) or sub-section (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 (2) 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 sub-section (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 5 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 per cent, 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 subsections (2) to (4) shall apply to such deposit.*

19. A reading of the above extracted provisions reveals, that though a statutory liability becomes fastened upon the authority concerned, to determine the compensation, besides an obligation becomes fastened upon the authority concerned, to deposit the determined compensation amount, in terms of the Rules, made in the above regard by the Government, and, theirs also stipulating, that thereafters alone, thus valid possession can become assumed over the acquired lands. However, since on a reading of the reply on affidavit furnished to the instant writ petition on behalf of NHAI, it is evident that, that after determination of compensation amount, the said determined compensation amount became deposited in terms of the relevant rules. Moreover, when post the performance of the above statutory acts, by the statutory authority concerned, thus possession over the acquired lands became assumed. Resultantly, the assumption of possession over the acquired lands, becomes fully protected, by evident compliance being meted by the respondents concerned, viz-a-viz the statutory echoings, as occur respectively in Section 3(G) and in Section 3(H) of the Act of 1956. Therefore, the learned counsel for the petitioner cannot argue, that any invalid possession of the acquired lands, thus became assumed by the NHAI.

Fourth submission of the learned counsel for the petitioner

20. The learned counsel for the petitioner has made a vigorous submission, 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.

Reasons for rejecting the above argument

21. However, the above made argument, before this Court, by the learned counsel for the petitioner, is also liable to be rejected. The reason for making the above conclusion becomes sparked from a contention, as, becomes raised on affidavit by the NHAI, that the entire land of the petitioner, has not been acquired. Contrarily, only a part of the land holdings of the petitioner has been subjected to acquisition. The result of the above, is that, thereby the petitioner has not been dislocated, and, thus is not entitled to claim the necessity of drawing(s) of the scheme for resettlement or rehabilitation.

22. Be that as it may, 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. 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.*	

23. 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.

24. Be that as it may, the apposite entitling provision, as occurs thereunder, is in respect of a house, which exists in rural areas. There are detailings about, upon, acquisition(s) thereof being made, thereupon the authority concerned, becoming statutorily obliged to construct a house as per Indira Awas Yojna. Moreover, in case of acquisition being made, thus for an irrigation project, thereupon, in lieu thereof, a statutory contemplation exists, for allotment of land in the manner stipulated thereins, thus to the "affected families". Furthermore, in case of acquisition being made for urbanization purposes, thereupon too, on development of the acquired lands taking place, thus 20% of the developed land is required to be reserved, and, offered to the

land owning project affected families, but with certain restrictions, as made thereins.

25. Though, the petitioner claims the benefits of the above Schedule, but he has not been able to plead nor prove, that as a result of acquisition, he has lost his house, nor he has been able to prove, that as a sequel of acquisition of his entire land, whereons, he was dependent for his livelihood, thereby he becomes an affected family. Therefore, nor thereby a dire statutory necessity, as became cast, upon the respondent concerned, to prepare or draw resettlement or rehabilitation scheme, nor thus became intentionally abandoned. Resultantly, the petitioner cannot entail, upon, the NHAI, that for non preparing of any resettlement or rehabilitation scheme qua thereby, the entire launched acquisition proceedings are vitiated.

26. It also appears, that the leverage qua assigning the benefit of the above statutory provision to the petitioner, and, also the assigning to him of the benefits of the Schedules appended with the Act of 2013, rather would well ensue, thus to the petitioner, only when there was evident displacement or evident deprivation of livelihood to him, whereupon alone he would become an "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 petitioner.

27. Moreover, Section 3(c) of the Act of 2013 defines the "affected families" in the hereinafter extracted manner.

> "***(c) affected family includes***—
> *(i) a family whose land or other immovable property has been acquired;*
> *(ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants*

including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

(iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;

(iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

(vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land."

28. Though, even the scope of the statutory definition assigned to the "affected families", does also embody to those families, whose lands, and, other immovable properties become acquired. Nonetheless, to the considered mind of this Court, no such evidence surges-forth, thus displaying, that after acquisition of the petition lands being made, he was left with no land holdings, and, thereby his right of livelihood became snatched. Resultantly the prejudicial effects, if any, cast upon the present petitioner, on account of acquisition of his land, may not lead to a further conclusion, that prima facie he became entitled to become assigned the benefit of

resettlement(s) and rehabilitation(s).

29. Contrarily since it is evident on a reading of the reply, furnished to the petition, by the respondents, that since the entire land of the petitioner has not been acquired, rather only a part of his land has been acquired, therefore, when as such on the unacquired part of the land of the petitioner, the latter may prima facie sustain himself or ensure his livelihood. Consequently, the petitioner prima facie cannot well contend, that on acquisition of the part of his land, there was yet a statutory obligation cast, upon the acquiring authority to prepare, and, draw a resettlement and rehabilitation scheme.

30. 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.

31. In the event of complete acquisition of the agricultural land of the estate owners becoming made, thereupon there would be total deprivation of livelihood to the land losers concerned.

32. As stated (supra), when only a part of the agricultural estate of the land loser concerned, becomes put to acquisition, thus thereby when he is yet left with an agricultural estate, thus for sustaining himself, and, his family, besides when thereby there is no deprivation of any source of livelihood to the land loser concerned. Resultantly, there would be no prejudicial effect, to such an agricultural estate holder concerned, in case only a part of his agricultural estate, becomes put to acquisition.

33. 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, 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.

34. 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 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 petitioner, as he has neither staked the said benefit, nor the acquisition of the land has been made for urbanization purposes.

35. 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.

36. Even if the above statutory leverage was assumingly assignable to the petitioner, thereby, he was 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 him, yet given the exorbitant price of lands, he became disabled to make fresh acquisitions therefrom. Thereupon, he 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 him. However, the petitioner did not chose to do so, thereby he is estopped from contending that the authority concerned departed from drawings of resettlement and rehabilitation scheme qua him. Therefore, the petitioner cannot contend that for non drawing of the above, thereby the acquisition proceedings are vitiated. On the contrary, since the petitioner, as mentioned in paragraph 4, as occurred at Page 14 of the writ petition, rather prior the acquisition proceedings, thus purchasing 111 kanals 10 marlas of land in the year 2000-2001, thereupon the petitioner appears to be financially well empowered, thereby he cannot deemed to be an "affected family" in terms of Section 3(c) of the Act of 2013, nor he can be construed to be dislocated or displaced in pursuance to the acquisition of his land, being made.

Reasons for rejecting the argument of the petitioner that the wall skirting his land, has been illegally demolished by the respondents.

37. Even otherwise, there was no wall skirting the petition land. The reason for drawing the above conclusion is founded, upon the google

earth images (Annexure R-3/2 and Annexure R-3/3), and, drone survey (Annexure R-3/4), whereins there occur unfoldings, that the survey(s) conducted, through the above mode(s) qua the acquired lands, thus were in the month of September 2020, hence prior to the issuance of notification under Section 3-A of the Act of 1956. However, at the above stage, it is revealed therefrom that no boundary wall was existing on the acquired land(s). Moreover, the subsequent survey, as became conducted by the NHAI through its adopting advanced technological modes, but post the issuance of notification under Section 3-A of the Act of 1956, and, to which Annexure R-3/5, is assigned, rather reveals, that then a boundary was raised. Therefore, it has to be concluded, that the boundary was was not raised by the petitioner prior to the issuance of the notification (supra) but was raised post the issuance of the said notification. Therefore, the petitioner cannot contend that the entire acquisition proceedings are vitiated, nor he can contend that the said boundary wall was illegally demolished by the respondents concerned.

Fifth submission of the learned counsel for the petitioner

38. The learned counsel for the petitioner has also argued, that the respondents concerned. be restrained from raising an infrastructure project.

Reason for rejecting the above argument

39. However, the said relief cannot be granted to the petitioner, thus not only for the above reasons, but also on the premise, that Section 20-A of the Specific Relief Act, 1963, provisions whereof stand extracted hereinabove, rather prohibit the making of the above asked for injunction qua the infrastructure projects, as is the instant project proposed to be raised by the respondents concerned.

Final Order

40. With the afore observations, the instant petition is disposed of. However, liberty is reserved to the petitioner to seek enhancement of compensation from the one, as determined by the authority concerned, through his raising a petition in terms of Section 3G(5) of the Act of 1956. If the said motion is time barred, thereupon the petitioner can make the relevant motion through appending therewith an application cast under Section 14 of the Limitation Act, and, thereons a lawful, and, speaking order shall be made by the authority concerned.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 06, 2023
Gurpreet

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