**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Writ Petition No.565 of 2020
Decided on : 10.01.2020**

Sukhdev Singh and others

... Petitioners

Versus

National Highway Authority of India and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. C.M. Munjal, Advocate
for the petitioners.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is to the Award dated 13.09.2019 (Annexure P-6), whereby the land of Bareta Mandi has been acquired under the provisions of National Highways Act, 1956 (for short '1956 Act'), for the purpose of up-gradation of two lane on the Moonak-Jakhal-Budhlada-Bhikhi Road.

2. The grouse of the petitioners in principle is that their land has been kept in category of "*Gair Mumkin"* instead of "Commercial" land and they have commercial shops and the property in the said commercial area of Bareta. Various documents including photographs of the shops, municipal council house tax bills, electricity bills and GST numbers etc. have been appended in support of the case.

3. Counsel has vehemently, accordingly, argued that by virtue of the wrong classification of the land, as the nature of the land was *Gair Mumkin*, compensation has been assessed @ ₹2,000/- per square yard,

whereas for the commercial land, it has been assessed @ ₹22,100/- per square yard. It is, thus, the case of the petitioners that on account of lack of CLUs by the competent authorities, the benefit of higher market value has not been granted. Counsel for the petitioners has further submitted that the provisions of Section 3G (5) of 1956 Act as such would not give him the benefit of challenge to the classification of the land to claim that it is commercial in nature.

4. The argument raised by the counsel for the petitioner is not liable to be accepted, as the provisions under Section 3G (5) of the 1956 Act provide that if amount determined by the competent authority is not accepted to by either of the parties, the amount can be determined by the Arbitrator to be appointed by the Central Government. It has further been provided under the said provision of Section 3G (7) (a) that the market value of the land on the date of publication of the notification under section 3A is to be determined while determining the amount likely to be paid under sub-section (1) or sub-section (5). The relevant portion of Section 3G reads as under:-

> **"3G. Determination of amount payable as compensation.**
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> (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.
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> xxxxxxxxxxxxxxxxxxxxxxxxx
>
> (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.

> xxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> (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;
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> (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."

5. A perusal of the above provisions would go on to show that there is a alternative and efficacious remedy available to the landowners to challenge the market value, which has been assessed by the competent authority. The provisions under Section 3G (7) (a) to (d) further provide the additional headings under which the market value can be assessed. The same are *para materia* to the provisions of Section 23 of Land Acquisition Act, 1894, whereby additional amounts become payable on account of severance, the damage sustained by persons which injuriously affected other movable property and where the person is compelled to change his house or place of business. The reasonable expenses, if any incidentally to such damage, which may be in consequential to the acquisition of the land also become payable.

6. Thus, it is apparent that it is an exercise which is to be carried out on the basis of the material placed before the authorities including the Arbitrator, which would be in the form of sale exemplars showing the prevailing market value of the area, specially since it is contended that majority of the land falls within municipal limits. It is settled principle that the writ Court would not exercise its extra-ordinary jurisdiction where disputed question of facts are involved. It is an exercise which is to be carried out on the basis of evidence in support of the market value and whether the land falls within the municipal limits or whether the house tax paid, which all are disputed questions. Therefore, this Court is chary to exercise its extra-ordinary jurisdiction in the facts and circumstances.

7. In similar circumstances, in **CWP No.2879 of 2018 'Harwinder Singh and others Vs. Union of India and others'** decided on 24.07.2019 compensation had been assessed differently for *Chahi* and *Gair Mumkin* land and the landowners had come to this Court challenging the award passed by the competent authority. This Court had relegated the petitioners to the remedy before the Arbitrator to be appointed by the Central Government. The relevant portion of the said order reads as under:-

> "Respondent No.2 in its reply has also taken the same plea and referred to the judgment of this Court in **CWP No.29431 of 2017 Phool Singh vs. National Highway Authority of India & Ors**. decided on 12.03.2018. The decision as such pertained to the issues on claim of *solatium* and interest which had been preferred and in similar

circumstances awards of the LAC had been challenged before this Court. It was noticed that the landowners in that set of cases had earlier also preferred the applications before statutory Arbitrator and also gone to the Additional District Judge and thereafter approached the writ Court. The relevant portion of the judgment reads as under:-

> *"Thus, in view of the alternative remedy as such available, it is always open to the petitioner to seek recourse to his alternative remedy for the statutory benefits which are due as it is settled principle that recourse to the writ court cannot be made if there s efficacious and alternative remedy available. The Apex Court in* ***United Bank of India Vs. Satyawati Tondon and others, 2010 (8) SCC 110*** *has noticed the principles of alternative remedy. It was observed that it was a self imposed restraint and the alternative remedy was a rule of discretion and not one of compulsion. The relevant observations read as under:-*
>
> > *"44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.*
> >
> > *45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative*

> *remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."*
>
> The principle as such is similar and more-so since disputed issues also regarding the market value of the land in question has to be gone into. The statutory arbitrator would be best suited to go into this thicket of disputed question as it is settled law that the writ court would not tread where the facts are not clear and the compensation is to be based upon sale exemplars of the area. Similar landowners would have already approached the statutory Arbitrator and therefore it would further lead to a very paradox situation since an appeal is provided as award of the Arbitrator can be challenged under the 1996 Act and a further appeal is provided to this Court and therefore it would lead to contradictory orders being passed if the statutory remedy as such is not availed. In such circumstances keeping in view the settled principle of law once there is an alternative remedy available more so as per Sections 3-G(5) & (6) of the Act provides a forum for the landowners who do not accept the amount determined by the competent authority. They thus have a right to approach the Arbitrator to be appointed by the Central Government."

8. Accordingly, keeping in view the above the present writ petition is also disposed off with the liberty to the landowners to approach the Arbitrator for the above said relief.

(G.S. SANDHAWALIA)
JUDGE

JANUARY 10, 2020
Naveen

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