

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

**CWP No.10315 of 2015
Date of decision: 21.5.2015**

Kartar Singh Saini and another

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Joginder Pal Sharma, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. The petitioners seek stay of disbursement of amount deposited in court under Section 31(2) of the Land Acquisition Act, 1894 (in short, "the Act") by respondent No.2 vide Annexure P.5 dated 3.5.2014 in view of interim order dated 27.4.2015, Annexure P.10 passed by the trial court. Further prayer has been made for directing the executing court to apportion the deposited amount of compensation equally among all the legal heirs and claimants. In the meantime, prayer for staying the operation of the impugned order dated 27.4.2015, Annexure P.10 has also been made.
2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Mishri Devi (since deceased) was owner of 61 kanals 6 marlas of land comprising in Khewat

No.1956, Khatoni No.2251, Rectangle No.80, Killa No.20 (0-2), Rectangle No.81 Killa No.3/2 (6-18), 4/2 (1-8), 7(8-12), 8(8-0), 13(8-0), 14(5-5), 16 (5-1), 17(8-0), 18/1 (4-4), 25/1 (5-6), Kita 11, 154/226 share in the revenue estate of Tehsil and District Rewari. Vide notification dated 9.8.2006 under section 6 of the Act, land was acquired for development of sectors 6 and 7 by respondent No.4 - Haryana Urban Development Authority. Award under Section 11 of the Act was passed on 7.12.2006. Compensation was awarded at the rate of ₹ 12,50,000/- per acre. Original owner Mishri Devi died on 28.10.2012. Without disclosing the fact of death of the original owner and without filing application under Order 22 Rule 3 CPC, respondent No.5 challenged the award by filing application under Section 18 of the Act. The reference under section 18 of the Act was decided vide order dated 27.8.2013, Annexure P.2 without incorporating the legal heirs of original owner. Respondent No.5 had been acting as legatee and sole surviving successor under the garb of power of attorney which ceased to operate on account of death of the original decree holder. On the basis of the award dated 27.8.2013, respondent No.5 proceeded to file execution application dated 9.10.2013, Annexure P.3 claiming entire enhanced compensation. The execution application was filed without disclosing the death of the original owner on the basis of power of attorney which had become defunct. Respondent No.5 in order to circumvent this lacuna brought on record Will dated 15.2.2010, Annexure P.4. In response to the notice in the execution application, the Land Acquisition Collector, Gurgaon deposited the proceeds in terms of Section 31(2) of the Act in the name of respondent No.5 in the court amounting to ₹ 1,79,84,953/-. The executing court did not question the maintainability of the execution application at the

behest of respondent No.5 alone inspite of the fact that the applicant had substituted his power of attorney with Will. Respondent No.5 was neither appointed as executor under the Will nor he was holding any letter of administration. He had not sought any probate from any competent court of law. He has no locus standi. As soon as the Will was produced, the executing court asked respondent No.5 to produce all the natural heirs to depose and support the correctness of the Will dated 15.2.2010. Respondent No.5 failed to establish the genuineness of the Will as he was unable to bring together all the natural legal heirs in support of the Will. Petitioner No.1 refused to sign in support of the Will. Petitioner No.1 immediately filed application for stay of proceedings before the executing court. Petitioner No.2 also filed objections as well as application for stay. The petitioners further prayed for stay of disbursement of deposited amount. Inspite of serious objections, the executing court granted liberty to respondent No.5 without ascertaining his credentials or maintainability of execution petition. Instead of dismissing the application, the executing court ordered disbursement to respondent No.5 in absolute terms and passed order dated 27.4.2015, Annexure P.10. Hence the instant writ petition by the petitioners.

3. We have heard learned counsel for the petitioners.

4. The primary challenge as raised in the writ petition is to the order of the executing court. In such circumstances, the writ petition is not the appropriate remedy and we do not find any justification to entertain this petition under Articles 226/227 of the Constitution of India. However, it shall be open for the petitioners to seek appropriate remedy available to them against the order of the executing court in accordance with law.

5. In all fairness, we may notice the judgments cited by learned counsel for the petitioners. Learned counsel had relied upon judgments in *Niranjan Singh and others vs. Amar Singh and others*, AIR 1984 Punjab and Haryana 250 (P&H), *J.M.Sohanlal and others v. Special Land Acquisition Officer, Bangalore*, AIR 1996 Karnataka 171 and *Sadhansu Kumar Ghose and another vs. Land Acquisition Officer, Patna and others*, AIR 1961 Patna 150. In *Niranjan Singh's* case, it was held that a person who did not file any claim in response to a notice issued under Section 9 of the Act and had not participated in the enquiry held by the Land Acquisition Collector under Section 11 of the Act cannot be impleaded by the court as a party to the proceedings pending before it on a reference made by the Collector under section 30 of the Act against the wishes of the person on whose application reference was made. In *J.M.Sohanlal's* case (supra), it was held that in the absence of any justification to withhold the compensation, mandamus could be issued to the Land Acquisition Collector to release the payment as he had no authority to withhold payment on impermissible grounds. In *Sudhansu Kumar Ghose's* case (supra), it was observed that the existence of a dispute with regard to apportionment of compensation was a question of jurisdictional fact and unless there was such a dispute existing, the Land Acquisition Officer had no authority or jurisdiction to make a reference to the civil court under section 30 of the Act. Such is not the position in the present case and the issue arising therein being different, consequently, learned counsel for the petitioners cannot derive any advantage from these pronouncements.

6. In view of the above, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

May 21, 2015
'gs'

(Rekha Mittal)
Judge