

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 24401 of 2015

Date of Decision: 12.5.2016

Ram Sarup and others

....Petitioners.

Versus

Union of India and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. Hardip Singh, Advocate for the petitioners.

Mr. Alok Jain, Advocate for Union of India.

Ms. Sudeepti Sharma, DAG, Punjab.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of certiorari for quashing the order dated 6.10.2015 (Annexure P-7) passed by respondent No.4. Further, directions have been sought to be issued to respondent No.4 to refer the petitions filed by the petitioners to the Principal Civil Court of Original Jurisdiction for adjudication of issue of apportionment of compensation of the acquired land as per Section 3H(4) of the National Highways Act, 1956 (in short

“the Act”).

2. A few facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. Government of India vide notification dated 7.8.2013 issued under Section 3-A of the Act followed by notification 26.2.2014 under Section 3-D of the Act acquired the land of ten villages in Tehsil Patran District, Patiala including the land of the petitioners for building (widening/four-laning etc.), maintenance, management and operation of National Highway No. 71(52) on the stretch of land from K.M. 181.805 to 238.695 (Sangrur-Khanauri-Patran Punjab/Haryana Border Section). The award was passed on 7.11.2014 (Annexure P-1) by respondent No.4. The petitioners were in cultivating possession of the acquired land for the last about 50-55 years as tenants of the Punjab Government and were earning livelihood of their families by cultivating the land in dispute. They have been in continuous cultivating possession of the acquired land and made number of improvements which even culminated into ownership and, therefore, have right, title and interest held by lessor and the lessee together and are entitled to receive compensation amount to the extent of 75% of the acquired land. When no compensation was paid to the petitioners of the land acquired in their possession, they filed petitions dated 21.1.2015 (Annexures P-2 to P-4, respectively) through counsel for apportionment of compensation but respondent No.4 did not allow the same to be registered in its office. The petitioners served a legal notice dated 12.3.2015 (Annexure P-5) upon respondent No.4 for consideration of petitions filed by them for the apportionment of compensation of the acquired land, but to no effect. Thereafter, the petitioners filed CWP No.

14585 of 2015 and this Court vide order dated 22.7.2015 (Annexure P-6) disposed of the said writ petition with a direction to respondent No.4 to take a decision on the legal notice dated 12.3.2015 (Annexure P-5) in accordance with law. As the dispute was with regard to apportionment of compensation, respondent No.4 was required to refer the petitions to the Principal Civil Court of Original Jurisdiction for adjudication as per Section 3H(4) of the Act, but respondent No.4 vide order dated 6.10.2015 (Annexure P-7) rejected the claim of the petitioners. Hence, the present writ petition.

- 3. We have heard learned counsel for the parties.
- 4. The main issue that arises for consideration in this appeal is relating to the interpretation of Section 3H(4) of the Act.
- 5. It would be advantageous to reproduce relevant portion of Section 3H(4) of the Act, which reads thus:-

“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.

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(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 dispute to the

decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.”

6. The plain reading of the said provision makes it clear that wherever any dispute arises regarding the apportionment of the amount or any part thereof, and also as to the persons to whom the same or any part thereof is payable, the competent authority would refer the dispute to the Principal Civil Court of original jurisdiction within whose territory the land is situated.

7. A Division Bench of this Court in **CWP No. 19838 of 2009 (Nirmal Singh v. Union of India and others)** decided on 11.11.2011 while dealing with the similar issue had recorded as under:-

“8. It is true that the Act is a special statute which has clothed the Central Government with the power to acquire any land for a public purpose, which is required for building, maintenance, management or operation of a national highway or part thereof. But many provisions of the Act are akin to the provisions of the Land Acquisition Act, 1894 (for brevity, ‘the 1894 Act’). A perusal of Sections 3A, 3C and 3D of the Act would show that they are similar to Sections 4, 5A and 6 of the 1894 Act respectively in their contents and intendment. Even Section 3H(3) and (4) of the Act are somewhat similar to Sections 18 and 30 respectively of the 1894 Act. Likewise, further provisions like Sections 3H and 3G of the Act are

equivalent to Sections 16 and 11 of the 1894 Act. Then it follows that the Competent Authority under the Act designated by respondent Nos. 1 and 2 would not be clothed with the power to adjudicate the claim of apportionment made by the parties in respect of the land for which notifications for acquisition have been issued under the Act. Under sub-section (3) of Section 3H of the Act, the Competent Authority may determine the persons who would be entitled to receive the amount payable to each of them where several persons make claim in respect of the amount deposited under sub-section (1) of Section 3H of the Act. This Section does not talk about any dispute between several claims, which in fact, has been specifically dealt with in sub-section (4) of Section 3H of the Act. Sub-section (4) of Section 3H of the Act opens with the words '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', then the Competent Authority nominated by the State Government like respondent No. 4 is under obligation to refer the dispute to the decision of the principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. Therefore, we are of the view that under the garb of power to determine the persons who in the opinion of

the Competent Authority would be entitled to receive the amount of compensation, which is in dispute, the Competent Authority could not have entered upon adjudication of the dispute and a reference should have been made to the Court of competent jurisdiction. Once the aforesaid legal position is clear from the reading of the provisions itself, the consequence of determining the apportionment between the petitioner and the private respondents have to be left to the adjudication of the District Judge.

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10. In view of the above, the dispute in respect of Khasra Nos. 77//21 (0-5), 78//16 Min. (0-19), 17 Min. (1-6), 25 Min. (0-19), which are shown in the name of Nirmal Singh and others, who are stated to be the owner/interested persons, is referred to the learned District Judge, Amritsar, as it is a Principal Civil Court of original jurisdiction in terms of Section 3H(4) of the Act. The learned District Judge shall decide the question of apportionment of the amount of compensation and shall also determine the question as to who is entitled to receive the amount of compensation in whole or in part. The needful shall be done preferably within a period of six months from the date when the parties would appear before the

learned District Judge by providing three opportunities to each side. The Registry is directed to send a copy of this judgment to the learned District Judge, Amritsar, who shall fix a date of appearance after issuing notices to all the parties.”

8. Another Division Bench of this Court in **CWP No. 9476 of 2012 (Amritsar Swadeshi Textile Corporation Private Limited v. The District Judge, Amritsar and others)** decided on 19.3.2013 had similarly held that the Principal Civil Court had the jurisdiction to decide the issue of apportionment of the amount or any part payable thereof.

9. Adverting to the factual matrix herein, it may be noticed that vide the impugned order dated 6.10.2015 (Annexure P-7), respondent No.4 had sought to adjudicate the issue of ownership and claim of the petitioners and had acted beyond the jurisdiction in recording a finding that the petitioners are in illegal possession of the land in question as they had not paid any rent after the year 2001. It has also been observed that the petitioners being in illegal possession of the land belonging to the State Government were not entitled to any compensation. Respondent No.4 while deciding the claim of the petitioners on an application filed by them under Section 3H(3) & (4) of the Act was under an obligation to refer the same to the Principal Civil Court of Original Jurisdiction where the property is situated and not to express any opinion on the merits of the controversy and reject it. It does not fall within the domain of respondent No.4 and, therefore, order dated 6.10.2015 passed by respondent No.4 is legally unsustainable.

10. In view of the above, the present writ petition is allowed and

the order dated 6.10.2015 (Annexure P-7) passed by respondent No.4 is quashed. Respondent No.4 is directed to refer the matter to the Principal Civil Court of Original Jurisdiction for adjudication immediately. The Principal Civil Court of Original Jurisdiction shall decide the question of apportionment of the amount of compensation and shall also determine the question as to who is entitled to receive the amount of compensation in whole or in part expeditiously in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

May 12, 2016
gbs

(RAJ RAHUL GARG)
JUDGE