

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

**CWP No.394 of 2016 (O&M)
Date of Decision : 22.08.2017.**

Labh Singh

.....Petitioner

Versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. Amandeep Saini, Advocate for the petitioner.

Mr. R.S. Madan, Advocate for respondent No.2.

Ms. Ruksaar Sandhu, AAG, Punjab for respondent No.3.

Mr. S.S.Rangi, Advocate for respondent No.4.

ARUN PALLI, J. (Oral)

This is a petition under Article 226/227 of the Constitution of India, praying for a writ in the nature of mandamus directing the respondent No.3 i.e. Sub Divisional Magistrate-cum-Competent Authority Land Acquisition Collector, Ludhiana (E), not to disburse the compensation to respondent No.4. And also for a direction to refer the apportionment dispute between the parties i.e. petitioner and respondent No.4, to the Civil Court.

Vide a notification dated 3.4.2014, issued under Section 3A(1) of National Highway Act, 1956, the Ministry of Road Transport and Highways (respondent No.1), had acquired a chunk of land for construction of a bypass. The petitioner and respondent No.4 jointly owned a land measuring 106

kanals out of which an area measuring 7 kanals 8 marlas also formed part of the acquisition. The competent authority (respondent No.3), vide award, dated 29.09.2015, had assessed the value of the acquired land. And, for, the petitioner was recorded to be the owner to the extent of 31/200 share, he was disbursed compensation in proportion to his share in the joint khata. Likewise, for, Charanjit Singh-respondent No.4, was shown to be the owner to the extent of 169/200 share, he too was released compensation in proportion to his share-holding. However, the petitioner, vide application, dated 30.12.2015 (Annexure P/4), raised a dispute qua apportionment of compensation, before the competent authority (respondent No.3). Briefly, the case set out by the petitioner was/is; that in a preemption suit filed by the petitioner against respondent No.4, qua a land measuring 19 kanlas, which formed part of the joint holding i.e. 106 kanals, the trial Court vide judgment and decree dated 5.6.1970, decreed the suit of the petitioner, and the said decree had since become final. And, for, owing to the said decree the share of the petitioner had increased in the joint khata, correspondingly his share in the compensation, qua the acquired land, also increased proportionately. Resultantly, he prayed that respondent No.4 be not released the disbursed amount or proportionate compensation i.e. ₹56,00,000/- approximately. But, as respondent No.3, failed to refer the dispute for determination to the Civil Court, the petitioner was constrained to approach this Court. Record shows that this Court had issued notice of motion as also notice regarding stay on 11.01.2016. It is not disputed that during the pendency of this petition, on 15.01.2016, respondent No.3, has since disbursed the compensation i.e.

₹1,64,00,000/- including the disbursed amount to respondent No.4.

I have heard learned counsel for the parties and perused the record.

Ex facie the provisions of Section 3-h(4) requires the competent authority; **if any dispute arises as 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.** Meaning thereby, once the petitioner had moved the competent authority, vide application dated 30.12.2015 (Annexure P-4), and had raised a dispute in terms of Section 3-H(4), respondent No.3 was obliged to refer the matter to the Civil Court. And, not just that, he ought not to have even disbursed a part of the compensation, qua which the petitioner had staked his claim on the basis of decree dated 5.6.1970. On being pointedly asked, learned counsel for the respondents could not show as to how the competent authority (respondent No.3) could decline to refer the dispute between the parties and instead release the compensation to respondent No.4.

In conspectus of the above, the writ petition is allowed. Respondent No.3, is directed to refer the dispute between the parties to the principal Civil Court of original jurisdiction i.e. District Judge, Ludhiana. Parties through their respective counsel shall appear before the District Judge on 4.9.2017. Further, to safeguard the interest of the petitioner, respondent No.4 shall furnish adequate security qua the disputed amount i.e. ₹56,00,000/-

approximately, to the satisfaction of the District Judge. Needless to assert that the necessary orders in this regard shall be passed after hearing both the parties. In the wake of the nature of controversy involved in the present lis, District Judge, Ludhiana is requested to decide the matter within a period of three months from the date the parties shall appear before him. It is clarified that this order shall not constitute any expression of opinion on merits of the case of either party.

22.08.2017

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No