

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.16870 of 2017
Decided on: 26.04.2018

Bhawanjit Singh

....Petitioner

Versus

National Highway Authority of India & others

...Respondents

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

Present: Mr.R.S.Randhawa, Advocate, for the petitioner.

Mr.Charanjit Sharma, Advocate, for respondent No.1.

Ms.J.K.Sidhu, AAG, Punjab, for respondent No.2.

Mr.K.S.Boparai, Advocate, for respondents No.3 to 6.

Mr.Chiranshu Bansal, Advocate, for
Mr.Vikram Singh, Advocate, for respondents No.7 to 11.

G.S. SANDHAWALIA, J. (Oral)

Prayer in the present writ petition, filed under Articles 226 of the Constitution of India, is for issuance of a writ in the nature of Mandamus, to apportion the amount of compensation calculated/determined under Section 3(G) of the National Highways Act, 1956 (for short the 'Act'), in accordance with Section 3-H, on account of the dispute regarding the apportionment of the compensation.

The petitioner has approached this Court on account of the fact that an award was passed on 04.08.2016 (Annexure P-3) under the 1956 Act, for the five villages. The petitioner claims to be owner in possession in Khasra Nos.18//11/2/2, 12/2, 13/2, 14/2, 15/2, 17/1, 18/1, 18/5, 19/1, 20/1/2, Khata No.143/150, as per Jamabandi for the year 2013-14 of Village Ladhra (Byepass Samrala), Tehsil Samrala, District Ludhiana. It is his grouse that he had filed an application dated 19.12.2016 (Annexure P-4) to

respondent No.2 that the private-respondents were co-sharers and they had no right in the residential and commercial land, which was acquired for making Samrala Bypass and that they were co-sharers in the agricultural portion. It is further his case that since the matter was not being referred for apportionment of the compensation for the acquired land, he had approached this Court in CWP No.33 of 2017, which was dismissed as withdrawn on 09.01.2017 (Annexure P-5) on the ground that there was no presumption that the authorities would not act as per law. He was, accordingly, given liberty to pursue that remedy.

Respondent No.1, in its reply, took the plea that it was for respondent No.2 to refer the dispute to the Principal Civil Court of Original Jurisdiction under Section 3H (4) of the Act.

Respondent No.2, in its reply, has submitted that application was rejected on the ground that as per the revenue record, the land was joint and no partition had taken place. Reference is also made to order passed by the Court of Shri Arunvir Kaushal, Civil Judge (Sr.Division) Ludhiana on 14.11.2003 that there was no stay on the sale or mortgage of share of the petitioner. It was further averred that it was not within the competence of authorities to award compensation to only one co-sharer instead of all the co-sharers, as per the revenue record.

Respondents No.3 to 6, in their reply, had taken the plea that they had purchased land measuring 19 kanals from Sham Kaur, through registered sale deed dated 01.11.1973 and some part of the land was acquired as per the award and they were also entitled for compensation.

They also claimed possession over specific portion and took the plea that they should be paid compensation according to the area acquired out of their ownership and possession as per the award.

Private respondents No.7 to 11, in their reply, took the plea that they were co-sharers and therefore, owners in possession of every inch of the joint estate and there was no dispute with regard to apportionment of disbursement of compensation and that the construction of the house, godowns, electric motor, plinth was under joint ownership and had been constructed jointly. No partition had taken place and therefore, they were entitled for equal compensation and the apportionment had rightly been done.

Counsel for the petitioner has rightly relied upon the judgment of the Division Bench of this Court in **Nirmal Singh Vs. Union of India & others 2012 (4) RCR (Civil) 44** and **Ram Sarup & others Vs. Union of India & others 2016 (4) PLR 50**, wherein the provisions of Section 3H (4) of the Act have been taken into consideration and it has been held that it does not fall within the domain of the competent authority to decide as to who is entitled for compensation. Relevant observations made in **Nirmal Singh's case** (supra) read 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.

The State has, however, chosen not to place the order on the record whereby the application was rejected for not making payment to the other co-sharers.

The grouse of the petitioner is, thus, that his entitlement, as such, should be more, on account of the fact that he was in possession of a constructed area which was of higher value, on account of the fact that it was commercial in nature. If that was so, it was also the bounden duty of respondent No.2 to refer the matter to the Court of Civil Original jurisdiction under Section 3H (4).

Resultantly, the present writ petition is disposed of, with a direction to respondent No.2 to adhere to the said provisions and to refer the application dated 19.12.2016 (Annexure P-4) to the said Court. It will be open to the petitioner to file a detailed application under the provisions of Section 3H (4) of the Act, to the said authority, within a period of 2 weeks from today and the said authority shall, thereafter, refer the matter to the Principal Civil Court of Original Jurisdiction, within a period of 2 weeks, thereafter. Needless to say that the said Court will, thereafter, decide, on the basis of the material placed before it, whether the petitioner is entitled for a more/better/higher share of the compensation awarded.

26.04.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

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