

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

(1) **CWP No.5211 of 2018 (O&M)**
Date of Decision:24.04.2018

Jasvir Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents
and

(2) **CWP No.10035 of 2018 (O&M)**
Date of Decision:24.04.2018

Sawarn Singh and others ...Petitioners

Versus

The Competent Authority-cum-Sub Divisional Magistrate and others
...Respondents

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

Present: Mr. Charanpal Singh Bagri, Advocate
for the petitioners.

Ms. Jasleen Kaur, AAG, Punjab.

Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate
for respondent Nos.3 and 4 in CWP-5211-2018.

Mr. Partap Singh, Advocate
for respondent No.5 in CWP-5211-2018.

G.S. SANDHAWALIA, J. (ORAL)

The present order shall dispose of CWP Nos.5211 & 10035 of 2018. The facts have been taken from CWP No.5211 of 2018 as common question of facts and law are involved.

Petitions have been filed to seek directions to respondent No.2 the Competent Authority-cum-Sub Divisional Magistrate, Fatehgarh Sahib under the National Highway Authority of

India Act, 1956 (for short 'the Act') to refer the matters titled (i) Jasvir Singh etc. Vs. Gram Panchayat, Ranwan and others, and (ii) Rajinder Singh and others Vs. State of Punjab and others, to the Principal Civil Court of Original Jurisdiction which is the Ld. District Judge, Fatehgarh Sahib for apportionment of the amount of compensation awarded by the competent authority.

It is pertinent to notice that in the written statement filed by the Gram Panchayat, Ranwan in CWP-5211-2018, the order passed by the said respondent declining the application and not referring the same and directing the compensation to be released in favour of the Gram Panchayat has been appended as Annexure R-5/1 by the competent authority under Section 3H(4) of the Act. The said order has accordingly been challenged in CWP No.10035 of 2018.

The grouse of the petitioners is that the land which had been acquired for the public purpose of widening (four six lanning), maintenance, management and operation maintenance of National Highway No.5 (new) on the stretch of land from Km 19.000 to Km 34.700 (old chainage) Ludhiana-Chandigarh section in district Fatehgarh Sahib. The petitioners were in possession of acquired land and therefore, applications were filed under Section 3H(4) of the Act to refer the matter to the Principal Civil Court. Averments were made that similarly matters of other villages had been referred to the District Judge, Fatehgarh Sahib but a different methodology as such had been adopted for the land falling in revenue estate of village Ranwan.

Resultantly, this Court has been approached and an interim order was passed on 05.03.2018 that the amount would not be paid to

Gram Panchayat, Ranwan, Hadbast No.304, Tehsil Khamano, District Fatehgarh Sahib and the amount was ordered to be kept in Fixed Deposit receipt till further orders to earn the highest rate of interest.

As noticed thereafter, the order has been passed on merits by respondent No.2 wherein it has been held as under:

“I have heard the arguments of Counsels for both the parties and examined the record/documents and found that as per Jamabandi for the year 2011-12 of village Ranwan, H.B. No.304, Tehsil Khamano, District Fatehgarh Sahib, Khasra Nos.29//1, 29//2/1, 29//10/1, 29//10/2/1-2, 29//3 as mentioned in para No.5 of the application have not been acquired, hence the question of release of amount of compensation to the applicants in respect of these khasra Nos. does not arise. Similarly, khasra Nos.31//3/2, 31//4, 31//6/2, 31//7/1 have been shown to be in the ownership column of Jamabandi as Nazool Sarkar and therefore, its ownership vests with the Government of Punjab in the Department of Revenue and the amount of compensation in respect of this kind of land has not to be paid to any person and the same has to be transferred from the State Government of Punjab to the Central Government in the Ministry of Road Transport free of cost. Similar is the position of Khasra Nos.20//1, 20//2/1, which is owned by the State Government of Punjab. So far as the amount of compensation in respect of Khasra Nos.12//16, 12//25/2, 12//25/3, 13//20, 13//21/1, 13//21/2, 13//22/1, 19//13/3, 19//17/2, 19//18/1, 20//7/1, 20//3/2, 20//6/2, 20//7/2, 20//8, 20//14, 20//15/1 is concerned, these Khasra Nos. are shown to be owned by the Gram Panchayat in the column of ownership of jamabandi for the year 2011-12 and the applicants have not challenged the entries of jamabandi in the Competent Court of Law i.e. under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961

before the Collector and can not agitate the matter at this stage before the undersigned, hence the amount of compensation in respect of these khasra Nos. is ordered to be released in favour of the Gram Panchayat of village Ranwan through its care taker i.e. Block Development and Panchayat Officer, Khamano.

Announced in open court in the presence of Counsels of both the parties.”

The provision of section 3H(4) came up for consideration before the Division Bench in **Nirmal Singh Vs. Union of India and others** 2012(4) RCR (Civil) 44 and it was noticed that the competent authority nominated by the State Government is under a obligation to refer the dispute for the decision of the Principal Civil Court of Original Jurisdiction within the limits of whose jurisdiction the land is situated.

It has further been held that competent authority could not have entered upon adjudication of the dispute and a reference should have been made to the Reference Court.

The relevant observation reads 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 National Highway Authority in its reply has also

supported the case of the petitioners that the matter has to be referred to the Principal Civil Court of Original Jurisdiction in accordance with the said provision.

Counsel for the Gram Panchayat has vehemently argued that there was no such case made out with the petitioners, therefore, the order passed is justified. He, however, could not dispute the binding precedent of the Division Bench as noticed above and could not refer to any other authority to the contrary.

Resultantly, this Court is of the opinion that the order passed by the respondent No.2 (Annexure R5/1) and which has been challenged in CWP No.10035 of 2018 as Annexure P-1 is without jurisdiction.

Accordingly, the writ petition is allowed and the said order is quashed. It is further directed that respondent No.2 shall refer the matter to Principal Civil Court of Original Jurisdiction within a period of one week on receipt of the certified copy of this order. The amount which has been deposited with National Highway Authority shall continue to remain as Fixed Deposit to earn the highest rate of interest till the matter is decided by the Civil Court. The said Court shall take earnest efforts to decide the petition at the earliest.

24.04.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No