

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

LPA No. 334 of 2018 (O&M)

Date of decision: 21.11.2018

Harbans Lal Gupta

... Appellant

Versus

Union of India and others

... Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Som Nath Saini, Advocate, for the appellant.

This is an intra-court appeal under Clause X of the Letters Patent, against an order and judgment dated 30.01.2018, rendered by the learned Single Judge vide which the writ petition preferred by the appellant seeking a direction to respondent No.3 i.e. Competent Authority (LAO)-cum-District Revenue Officer, Panchkula, to refer the dispute between the parties to the reference Court for determining their rights and entitlement to receive compensation qua the acquired land, has since been dismissed.

The case set out by the petitioner has been that he had purchased a land measuring 8 kanals 4 marlas, comprised in khasra No.30//11/1, situated in village Bagwali, vide sale deed dated 16.12.1991. And he was put in possession. However, vide notification under Section (i) of Section 3-A of the National Highways Act, 1956, [for short 'the Act'] published on 4.12.2009, the area measuring 2 kanals out of the said land

along with another chunk of land, situated in different villages in district Panchkula, was sought to be acquired by the Ministry of Shipping Road and Transport and Highways Government of India. A final declaration under sub Section (i) of Section 3-D of the Act was published on 12.02.2011. And, eventually the competent authority assessed compensation and rendered the award No.42 dated 4.2.2013. Accordingly, vide application dated 5.7.2013, the appellant moved the District Revenue Officer, Panchkula, to award compensation in lieu of acquisition of his holding. Likewise, another application dated 13.09.2013, was moved by respondents No.5 to 8, who alleged to be the co-owners, claiming compensation qua the same land, as also the area comprised in khasra No.19//2. But as averred, when the appellant contacted the competent authority (respondent No.3), he was rather advised to seek partition of the land purchased by him, for only thereafter he could be released the compensation. As a result, the appellant filed a partition application, which was decided by the revenue authorities on 14.05.2014. Whereupon, the land comprised in khasra No.30//11/1 measuring (8-4) itself was allotted to the appellant, while the other co-sharers were allotted a land comprised in khasra No.17//25/2 (2-16), 30//19/2 (6-04), 30//20/1 (4-18), 30//22/1 (1-16), 30//23/1 (2-010). But even though he was the exclusive owner of the acquired land, he was not awarded the compensation therefor. Resultantly, he moved an application dated 30.03.2015, to ascertain as to why the compensation was not being released. And, in response, the respondents-authorities vide letter dated 10.04.2015, informed the appellant that compensation qua the acquired land

had since been disbursed to all the co-sharers in terms of their respective shares including the appellant. Resultantly, the appellant complained to the authorities that since the acquired land, measuring 2 kanals comprised in khasra No.30//11/1, had fallen to his share in partition proceedings, he alone was entitled to receive the compensation. As a result, the legal opinion of the Deputy District Attorney was sought for, who vide noting dated 2.9.2015, opined that since there existed a dispute amongst the co-sharers as regards title and entitlement to receive compensation the matter required to be referred to the Civil Court with the disputed amount. But despite that the respondents-authorities declined to refer the dispute to the reference Court as the compensation had already been disbursed to all the co-owners. It was in this background the appellant approached this Court, vide writ petition referred to above, alleging that the action of the respondents-authorities in not making a reference to the Civil Court for determination of dispute between the parties was wholly illegal. And, for, the petition filed by the appellant was dismissed vide impugned order and judgment, thus this appeal.

Learned counsel for the appellant submits that indisputably the appellant had purchased the land measuring 8 kanals 4 marlas comprised in khasra No.30//11/1, vide sale deed dated 16.12.1991, and pursuant to the order of partition dated 14.05.2014, revenue authorities had allotted the said khasra numbers in his favour, and therefore he being the exclusive owner was entitled to receive the compensation therefor. In any case, he submits that since there was a dispute between the parties as regards entitlement to

receive compensation for the acquired land, the authorities were under obligation to refer the matter to the Principal Civil Court of Original Jurisdiction in terms of sub Section (4) of Section 3-H of the Act. Particularly, as upon the legal opinion sought by the authorities, the Deputy District Attorney had opined: for a dispute existed amongst the co-shares the matter was required to be referred to the reference Court. In support of his submissions he has placed reliance upon the decision of the Supreme Court in **Sharda Devi Vs. State of Bihar AIR 2003 Supreme Court 942**, and of Madras High Court in **R. Shanmugam and 6 others Vs. The Special District Revenue Officer (L.A), National Highways-47 & 67, No.3, Savarimuthu Chettiar Street, Red Fields, Coimbatore 641045 and another, 2013 (2) C.W.C. 576, Abbas T. Vagh. and others Vs. The Competent Authority & Spl. Revenue Officer (LA), National Highways Schemes, Kanchipuram & Thiruvallur Districts at Kanchipuram and others 2014(1) C.W.C. 1** and of this Court in **CWP No.27333 of 2015 (Sarup Singh Vs. State of Haryana and others), decided on 25.10.2016.**

We have heard learned counsel for the appellant and perused the records.

Undoubtedly, the appellant had purchased a land measuring 8 kanals 4 marlas comprised in khasra No.30//11/1, pursuant to a sale deed dated 16.12.1991, and even if, it is assumed that he was put in actual physical possession thereof, it would still not advance his case any further. For, concededly, the area purchased by the appellant was a part of a joint khata owned by other co-sharers, to the extent of their respective shares, as

well. Therefore, even if, the appellant had purchased a specific khasra number and was put in possession, in law it could only be termed as sale of a share which was subject to partition of the joint land. Thus, if an area measuring 2 kanals was acquired out of the joint holding all the co-sharers having right, title and interest therein were required to be disbursed compensation, in terms of, their respective shares in the joint khata. The argument advanced by the learned counsel for the appellant that since in the partition proceedings the acquired land, comprised in khasra No. 30//11/1, had exclusively fallen to his share, and thus, the compensation therefor could only be awarded to the appellant is apparently erroneous. Indisputably, the Land Acquisition Collector had rendered an award on 4.2.2013, when the acquired land was still a part of the joint holding. Significantly, the appellant had moved an application seeking partition of the joint land on 7.8.2013, and the order of partition was passed by the revenue authorities on 14.05.2014. Therefore, *ex facie*, the partition proceedings having been initiated post passing of the award dated 4.2.2013, the order dated 14.05.2014, had no relevance as regards disbursement of compensation of the acquired land. Needless to assert that once the Land Acquisition Collector pronounced the award on 4.2.2013, the land in question vested in Government/authorities free from all encumbrances. Thus, one wonders as to how, the appellant could even seek partition of the acquired land. Likewise, the question that assumes significance is: once the land in question stood acquired how could it be allotted by the authorities to the appellant in the partition proceedings. It appears that the fact that the

land measuring 2 kanals comprised in khasra No. 30//11/1 already stood acquired was perhaps not even disclosed to the authorities seized of the partition proceedings. Not just that the Commissioner Ambala Division, while submitting his report dated 9.9.2016, to the Financial Commissioner, Government of Haryana, Revenue and Disaster Management Department, Chandigarh, also observed **“According to above in this matter the procedure of partition is fraudulent. As per award the Land Acquisition Officer has paid compensation to the co-sharer as per share the above compensation having paid to the co-sharer by said Revenue Officer has also included the land of the Govt. comprised in Khasra No.30//11/1 in Kurrah of Sh. Harbans Lal and warrant of possession and by mutation he was made as owner in possession. In this way it is fraud with the Government, so this report is submitted to you for further necessary action”**.

We are also reminded to point out at this juncture that the case set out by the appellant himself is that the compensation in proportion to the respective share of the other co-sharers was released on 16.09.2013, and an amount of Rs.7,48,981.10, was deposited by respondent No.3, in the account of the appellant in the year 2015, itself. The respondents-authorities having considered and deliberated upon the repeated representations submitted by the appellant had clearly concluded vide letter dated 29.10.2015 (Annexure P-9), that as the compensation stood disbursed to all the co-sharers, there was no occasion to refer the matter to the reference Court, and thus, no further action was required to be taken.

Apparently being conscious of the true position the appellant did not choose to question either the decision of the respondents-authorities dated 29.10.2015 (Annexure P-9) or the report dated 9.9.2016 (Annexure P-10), referred to above, submitted by the Commissioner, Ambala Division. In fact, what indeed led the appellant to approach this Court vide a writ petition, indicated above, was a notice issued by the Assistant Collector 2nd Grade to the appellant to review the partition proceedings, wherein he was required to cause appearance on 23.01.2018. Which is why, he filed the writ petition on 24.01.2018 and prayed: **further the respondent may be restrained from proceedings further by initiating Suo Moto review proceedings regarding the partition order passed by the Assistant Collector-II Grade Barwala, dated 14.05.2014 whereby the final partition has been made and Sanad has been issued**". Though, ostensibly, the appellant prayed for a mandamus requiring the respondents to refer the dispute between the parties in terms of sub Section (4) of Section 3-H of the Act to the reference Court, but essentially his intent and purpose was to stall the review proceedings initiated by the revenue authorities. In fact, had he been actually aggrieved owing to the authorities having declined to refer the matter to the reference Court in 2015 itself, he would not have waited for three years to file a writ petition in the year 2018.

Now we may also advert to the provisions of sub Section (4) of Section 3-H of the Act:

"3-H. Deposit and payment of amount:-

(1) to (3) xx xx xx

XX

XX

XX

(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”.

There cannot be any quarrel with the proposition of law that in the event of any dispute as regards rights and entitlement of the parties to receive compensation qua the acquired land, in terms of sub Section (4) of Section 3-H of the Act, the authorities are required to refer the dispute to the Principal Civil Court of Original Jurisdiction for determination. And, may be to that extent the observation of the learned Single Judge that if the appellant required the authorities to refer the dispute to the reference Court he ought to have moved an application, is not in sync with the provisions, referred to above. But, be that as it may, for, we have examined the matter in depth and concluded: concededly the acquired land was jointly owned by the appellant and other co-sharers at the time of acquisition as also when the award was pronounced. Thus, the respondents-authorities were fully justified to award compensation to all the co-sharers in terms of their respective shares recorded in the record of rights. Therefore, there indeed being no dispute, the provisions of sub Section (4) of Section 3-H were neither attracted nor could be invoked. We have also examined the decisions, referred to above, that have been relied upon by the learned

counsel for the appellant, but in the wake of the position, as sketched out above, they have no bearing on the matter.

Thus, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. For, the appeal lacks both i.e. bona fide as also the merit, the same is accordingly dismissed with costs of Rs.30,000/- which shall be deposited by the appellant with the Bar Association, Punjab and Haryana High Court, Chandigarh, within one month from today and a receipt thereof shall be produced before the Registrar General of this Court.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

21.11.2018

Manoj Bhutani

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