

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9071 of 2019

Date of Decision: 04.04.2019

Pritam Singh & Ors.

... Petitioners

VS.

Union of India & Ors.

... Respondents

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

Present: Mr. GS Sidhu, Advocate for the petitioners

G.S. SANDHAWALIA, J. (Oral)

The petitioner seeks apportionment of compensation of the land which was acquired vide award dated 12.11.2017 (P3). It was their claim that the application has been filed with respondent No.5 for compensation on account of acquisition of 12 kanals 4 marlas falling in khasra no.224//14/1(0-4), 14/2(3-8), 17/1(7-13), 17/2(0-7), 18/2/1(0-2) total land measuring 12 kanals 4 marlas, Khatauni No.1546 of the jamabandi for the year 2013-14 village Handaya-D.

The claim is on the basis of the possession of Sh. Jangir Singh s/o Bhajan Singh since the petitioners allege, are the sons of Daman Singh s/o Bhajan Singh. It is their case that the said Jangir Singh has been shown as *gair marusi* in the column of cultivation since 1978-79 as per the jamabandis attached.

A perusal of the award would show that the land in question has been shown as 'mustarka malkan'. The concerned Gram Panchayat has also not been impleaded in the present writ petition. The acquisition is under the National Highways Act, 1956. Section 3G(2) of the National Highways Act, 1956 provides that right of user or any right in the nature of an easement on any land acquired under the Act, there shall be paid an amount to the owner

and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land. Section 3G(1)&(2) read as under:-

“3G. Determination of amount payable as compensation.—(1)

Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.”

Similarly, Section 3H(4) provides that 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. Section 3H(4) reads as under:-

“(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.”

The Division Bench in **Nirmal Singh vs. Union of India & Ors., 2012(4) RCR (Civil) 44** has held to the said effect regarding the jurisdiction of the competent authority. The relevant portion 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.”

Keeping in view the above, this Court is of the opinion that since interest of several persons are involved no such direction can be issued as prayed for regarding payment of compensation at the first instance at the hands of the petitioners at their back. They have to show their right as such and entitlement qua the land which is in possession of the Jangir Singh. In such circumstances, the alternative remedy as such is available to them under Section 3H(4) which they have to avail.

The Apex Court in **United Bank of India vs. Satyawati Tandon & Ors. (2010) 8 SCC 110** has held that the writ jurisdiction is not to be exercised where the parties have an alternative and efficacious remedy as it is a discretionary power. The relevant portion reads as under:-

“30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*
- (b) the petition reveals all material facts;*
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;*
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;*
- (e) ex facie barred by any laws of limitation;*

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

Resultantly, the present writ petition is liable to be dismissed as not maintainable.

Faced with this, counsel submits that he does not wish to press this writ petition and prays to avail his remedy before alternative forum.

Dismissed as not pressed with liberty aforementioned.

04.04.2019

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(G.S. Sandhawalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No