

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

**Civil Writ Petition No.12487 of 2016
Decided on : 04.02.2019**

The Schedule Caste Cooperative Land Owning Society Ltd.

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present : Mr. Sumit Duta, Advocate
for the petitioner.

Ms. Simran Grewal, AAG, Punjab
for respondents No.1 & 2.

Mr. Ankush Choudhary, Advocate for
Mr. Satyaveer Singh, Advocate for respondent No.3.

G.S. Sandhawalia, J. (Oral)

The present writ petition under Article 226/227 of the Constitution of India has been filed against the order dated 29.04.2016 (Annexure P-5) passed by respondent No.2-the Land Acquisition Collector -cum-Sub Divisional Magistrate, Rajpura (for short 'the Collector').

By virtue of the said order, the Collector has adjudicated on the merits of the case that respondent No.3-Malkit Singh is entitled for the payment of compensation for land measuring 1 Bigha 4 Biswas, which was acquired for construction of the road from Rajpura to Chandigarh (NH-64) to Nabha Power Plant, Rajpura via Mirzapur, falling in the said village. The Award was passed on 18.04.2011. The respondent No.3 on the basis of an application dated 05.02.2016 (Annexure P-4) had claimed that he had a sale deed dated 31.08.2007 (Annexure R-2/2) in his favour.

It is pertinent to notice that the land in question was 'Nazool' land and had been allotted to the petitioner-The Schedule Caste Cooperative Land Owning Society Ltd. (for short 'the Society') vide sale certificate dated 15.12.1973 (Annexure P-3) and, resultantly, Assistant Registrar Cooperative Societies was made a party. It was the case of the petitioner-Society that there was a bar as such for alienation and, therefore, the claim of compensation of respondent No.3 on the strength of the said sale deed was not justifiable.

Vide order dated 29.04.2016 (Annexure P-5), respondent No.2 while going into the merits of the case held that a civil suit had been filed challenging the sale deed by the Society, which had been dismissed in default on 27.05.2014 (Annexure R-2/1). As no appeal had been filed against the same and the land in question was acquired in the year 2011, it was held that Malkit Singh was entitled to compensation.

Counsel for the petitioner has submitted that the order was without jurisdiction and even thereafter an application has been filed before the Deputy Commissioner, Patiala on 31.05.2016 (Annexure P-6) regarding staying/handing over the cheque to Malkit Singh. An application had also been filed to respondent No.2 to make a reference to the District Judge on 09.06.2016 (Annexure P-8) and resultantly, the present writ petition has been filed.

Counsel for the petitioner has relied upon the judgment passed in '**Arulmighu Lakshminarasimhaswamy Temple Singrigudi Vs. Union of India**' 1996 (6) SCC 408, to submit that once there is a

dispute to whom the payment is to be made, a legal course is open to make a reference under Section 30 of the Land Acquisition Act, 1894 (for short 'the Act') to decide the *inter se* claim to receive compensation.

Section 30 reads as under:-

“30. Dispute as to apportionment. - When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.”

The Court has been defined under the provisions of Section 3 (d) of the Act to mean the Principal Civil Court of original jurisdiction.

The definition reads as under:-

“(d) the expression “Court” means a principal Civil Court of original jurisdiction unless, the [appropriate Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act.”

In 'Bhagwan Das and others Vs. State of U.P. and others'

2010 (2) SCR 1145, the Apex Court has held that the Collector is not a Court as such and, therefore, respondent No.2 has transgressed the jurisdiction of the Civil Court and, therefore, the order, thus, suffers from lack of jurisdiction. The relevant portion reads as under:-

“5. Section 54 of the Act provides for an appeal from the award of the court in any proceedings under the Act to the High Court, and from the decree of the High Court to the Supreme Court. Section 3(d) of the Act defines the expression "court" to mean a principal civil court of original jurisdiction, unless the appropriate Government has appointed a special officer within any specified local limits to perform functions of the court under the

Act. On the other hand, the expression "Collector" is defined in section 2(c) of the Act as the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act. The decision of the Collector made after an enquiry under section 11 with the previous approval of the appropriate Government or its authorized officer is termed as the 'award of the Collector'. The determination by a court under section 26 of the Act in a reference by the Collector is termed as an 'award of the court' which shall be deemed to be a decree. Thus there is a difference between an 'award of the Collector' which is an offer of compensation by the Collector as the agent of the Government, and 'an award of the court' which is a determination of the compensation by a civil court on a reference by the Collector. Further, the Collector can either make a reference or refuse to make a reference to the court under section 18 of the Act or under section 30 of the Act, and such orders of the Collector are merely acts of a Statutory Authority in exercise of statutory functions and are not adjudicatory in nature. Such orders are not awards. The Land Acquisition Collector is not a Court, nor his award or order, an award of the Court. While the proceedings of a court resulting in an award of the court are judicial proceedings, neither the proceedings of the Collector under section 11 of the Act resulting in an award of the Collector, nor the proceedings relating to an application seeking reference, are judicial proceedings. Section 54 does not provide for appeals against the awards or orders of Land Acquisition Collector. Hence the assumption of the High Court that an order of the Collector refusing to refer a claim for increase in compensation to the civil court under section 18(1) of the Act, is an 'award of the court' appealable under section 54 of the Act, is wholly erroneous."

In the reply filed by respondents No.1 and 2 justification as such has been made to support the impugned order that the name of the respondent No.3 had been entered in the revenue record as per the sale deed and the payment, thus, has been made to respondent No.3 by

respondent No.2.

Respondent No.3 has relied upon the dismissal of the civil suit and that there is a bar only for selling of the land for 10 years and there was no restriction on transferring of said land and resultantly, justified the order.

As noticed the issue is to be decided by the Court of Principal Civil Court of original jurisdiction and once respondent No.2 had opted even to call upon Assistant Registrar Cooperative Societies regarding the issue of title, he should have stayed his hands and rather should have refrained from adjudicating the matter.

Accordingly, this Court is of the opinion that order dated 29.04.2016 (Annexure P-5) passed by respondent No.2 is without jurisdiction and is, accordingly, quashed. Respondent No.2 shall refer the application dated 09.06.2016 (Annexure P-8) to the District Judge, Patiala for deciding the issue in detail within 4 weeks from the receipt of the copy of this order. The Reference Court shall, accordingly, protect the interest of the petitioner-Society also during the pendency of the reference petition regarding the payment, which has already been received by respondent No.3 by passing appropriate directions.

The writ petition stands allowed, accordingly.

FEBRUARY 04, 2019

Naveen

*Whether speaking/reasoned:
Whether Reportable:*

**(G.S. SANDHAWALIA)
JUDGE**

*Yes/No
Yes/No*