

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11431 of 2018 (O&M)

Date of Decision: 29.03.2019

Swaran Singh

... Petitioner

VS.

UOI & Ors.

... Respondents

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

Present: Mr. NS Swaich, Advocate for the petitioner

Mr. DS Dadwal, Advocate for
Mr. SK Sharma, Advocate for UOI

Ms. Simran Grewal Randhawa, AAG Punjab

G.S. SANDHAWALIA, J.

The petitioner under Articles 226/227 of the Constitution of India seeks quashing of the order dated 31.08.2017 (P8) whereby the claim for releasing the compensation/damages to the petitioner in lieu of the acquired land for constructing the by-pass Laddowal Road to Ludhiana. The same was under the possession of the petitioner since 2014 as leasee and the claim has been rejected by respondent No.4 while exercising the powers of Land Acquisition and Rehabilitation Authority. Vide endorsement made on the said application, the Gram Panchayat was held to be owner of the land and cheque was accordingly directed to be given to the said Gram Panchayat Jainpur who is now sought to be impleaded as respondent No.5.

Reply of the official respondent as such is that the petitioner was tenant on the Panchayat land and as such not entitled to the compensation of the land and being the annual lease-holder was not entitled to the same. 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 is 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** 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.”

Resultantly, this Court is of the opinion that the endorsement which has been made on the application by respondent No.4 was not justified. Accordingly directions are issued to the said respondent to refer the matter to the principal Court of original jurisdiction regarding the entitlement of the petitioner, if any, within 6 weeks from receipt of the certified copy of the order. It is made clear that the observations regarding the entitlement of the petitioner are only *qua* the reference of the dispute and the Reference Court shall decide the case independently on merits by issuing notice to the appropriate Gram Panchayat also.

The writ petition stands disposed of.

29.03.2019

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(G.S. Sandhawalia)
Judge

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

Yes/No
Yes/No