

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

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**CWP No.11820 of 2018**  
**Date of Decision: 12.04.2019**

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Tajinder Singh & Ors.

... Petitioners

VS.

State of Punjab & Ors.

... Respondents

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

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Present: Mr. CS Bagri, Advocate for  
Mr. Anilendra Pandey, Advocate for the petitioners

Ms. Simran Grewal Randhawa, AAG Punjab

Mr. DK Singhal, Advocate for respondent No.3

Mr. ML Saggar, Sr.Advocate with  
Mr. Arman Saggar, Advocate for respondent No.4

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**G.S. SANDHAWALIA, J. (Oral)**

(1) The petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India seeking a direction in the nature of mandamus to respondent No.2 for referring the matter to principal Civil Court of original jurisdiction, namely, the District Judge, Ludhiana for the purposes of apportionment of compensation. The dispute pertains to land falling in Rect.No.46, Khasra No.18/3, 19/2, 20/2, 21, 22, 23/1 Rect.No.59, Khasra No.1/1/1, 3/1,3, Rect.No.39, Khasra No.11/3, 19/1, 18/2/1, 19/2/1, 20/1 and Rect.No.38 Khasra No.16/1/2, 15/2 situated in village Bondli, Hadbast No.107, Tehsil Samrala, District Ludhiana. The land was acquired under the National Highways Act, 1956 vide notification dated 04.02.2017 thereafter the award was passed on 12.07.2017 (P1).

(2) The case of the petitioners as pleaded in the writ petition is that a settlement dated 16.05.1995 was arrived at among the owners of Rect. No.46 & 59 and the forefathers of the petitioners who were owners of the

land in Rect.No.38 & 39 had agreed to exchange the land measuring 28 kanals 5 marlas comprised in Rect.No.38 & 39 with land measuring 28 kanals 5 marlas in Rect.No.46 & 49 mutually *inter se* parties. A civil suit was filed which was decreed in the year 1998 and affirmed by higher courts. It is their cases that no one acted upon and got executed the Civil Court decree. The owners of the above-mentioned chunks of land mortgaged their respective shares of land to get loans. It is their cases that mutation had been done without knowledge and intimation of the petitioners and on the basis of the exchange deed of 1995 and the judgment dated 20.05.1998 and the private respondents No.5 to 10 have received the money. It is not disputed that respondent No.4's share is yet to be paid to him but on account of the interim order passed this Court dated 30.05.2018 the amount has not been disbursed.

(3) It is not disputed that the petitioners have filed an application under Section 3H(4) of the National Highways Act, 1956 to respondent No.2 for referring the matter to the Civil Court as prescribed under the Act. The stand of the State in the reply filed by respondent No.2 is that on account of exchange and civil suit between the parties has resulted in the sanctioning of mutation of exchange which has changed the khasra No. of the petitioners. The assessment registered prepared by Naib Tehsildar Samrala implemented the mutation of exchange between the parties on 29.12.2017. The deletion had been done from the land they had given in exchange and the name had been entered in the land which they had got by way of exchange. Accordingly as per the latest revenue record and there being no ambiguity in the ownership, the matter was not referred to the Civil Court. It was further averred that compensation had to be paid to the validly

recorded owner of land being acquired and there was no remarks on the assessment register regarding bank loan, so no deduction had been made from the land compensation. It is further averred that the petitioners are free to challenge the change in mutation proceedings before the competent Court.

(4) The NHAI in its reply has taken neutral stance that it had no concern with the internal dispute of apportionment and they have been unnecessarily dragged in the litigation.

(5) Respondent No.4 in its reply has referred to the Civil Court decree which had been appended by the petitioners as Annexure P9. It is submitted that the appeal filed by Gurdial Singh had been dismissed on 07.01.1999 and thereafter had been upheld in RSA No.1386 of 1999 on 14.05.2000 (R4/1). It is further averred that the revenue authorities have sanctioned the mutation on the basis of judgment and decree obtained by them in their favour. There was an oral exchange amongst the answering respondents and others and the predecessor-in-interest of the petitioners and possessions were exchanged. The Civil Suit had been filed by Nirmal Singh and others against answering respondent NO.4 and others as mentioned above and they were declared owners in possession of the land vide judgment and decree date 20.05.1998 which has been upheld by this Court vide judgment dated 14.09.2000. As such it could not be said that the parties did not act upon and get executed the Civil Court decree. Pleadings regarding the bank loan as such was admitted to the extent that the parties are bound to repay the loan obtained by them. The petitioners were neither in possession nor owners of the land in view of the oral exchange followed by civil court decree.

(6) Counsel for the petitioners has vehemently argued as such and relied upon Annexure P3 to show that there was a loan as such by petitioner No.1 Sukhjot Singh son of Gurmail Singh with the Canara Bank at Samrala Branch for ₹ 25 lakhs as per the mortgage dated 22.05.2017 pertaining to Rectangle No.39 and 46. As noticed even the private respondents have not denied this factum of taking loan. Similarly reference is also made to Annexure P5 to show that against Rect.No.46, respondent No.6 Jagtaran Singh s/o Nohria r/o Bondli had also mortgaged the land with Allahabad Bank, Samrala for ₹ 20 lakhs. However, counsel for the petitioners has vehemently argued that the possession as such had not changed hands. The Civil Suit was eventually decreed on 20.05.1998 (P8). The relevant portion reads as under:-

*“12. In view of my findings on above issues, the suit of the plaintiffs succeeds and same is decreed with costs for declaration to the effect that the plaintiffs are owners with possession of land measuring 28K-5M out of the land measuring 37-8M comprised in khewat No.117, Khatauni No.46, Killa Nos.18/3, 19/2, 20/2, 21, 22, 23/1 as per the jamabandi for the year 1990-91 situated at village Bondli, H.B. No.107, Tehsil Samrala, District Ludhiana on the basis of writing of exchange dated 16.05.1995, along with all rights appurtenant thereto and the defendants are also restrained from dispossessing the plaintiffs forcibly and illegally, without due course of law and the defendants also restrained from alienating in any manner, the land measuring 37K-8M as*

*detailed in the plaint. Decree sheet be prepared accordingly.*

*File be consigned to record room.”*

(7) The matter had been upheld in the appeal in RSA No.1386 of 1999 filed by Gurdial Singh respondent No.4 in which the predecessor-in-interest of the petitioners Malagar Singh was respondent No.2.

(8) Counsel for the petitioners has vehemently tried to convince this Court that the possession had not changed as per the decree. It is settled principle that this Court under writ jurisdiction is not to go into the disputed questions of fact. The matter regarding the apportionment and the issue of jurisdiction as such once the dispute has been raised would be covered by the observations of the Division Bench in **Nirmal Singh vs. Union of India & Ors., 2012(4) RCR (Civil) 44**. 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."*

- (9) However it is also to be kept in mind while protecting the interest of the private respondents in as much as *prima facie* the predecessor-in-interest of the petitioners Malagar Singh was also a plaintiff in the civil suit filed by Nirmal Singh. A declaration had been sought that they were owners in possession of land measuring 28 kanals 5 marlas out of land measuring 37 kanals 8 marlas comprised in khewat No.117, Khatauni No.46, Killa Nos.18/3, 19/2, 20/2, 21, 22, 23/1 as per the jamabandi for the year 1990-91 situated at village Bondli, H.B. No.107, Tehsil Samrala, District

Ludhiana on the basis of writing of exchange dated 16.05.1995. Thus the petitioner cannot be allowed to prima facie blow hot and cold. In such circumstances, this Court is of the opinion that in order to protect the interest of the parties, the respondent No.4 shall be entitled for the release of the amount of compensation which had been deposited subject to furnishing adequate security before the Civil Court of original jurisdiction.

(10) However, the writ petition is allowed partly to the extent that respondent No.2 shall refer the matter under Section 3H(4) to the Civil Court of original jurisdiction within a period of 4 weeks from the date of receipt of certified copy of this order. Needless to say that the parties shall be bound by the final decision of the Reference Court and this Court has not commented on the merits of the controversy. The Reference Court shall also pass appropriate orders of how the amount is to be refunded in case the petitioners are found entitled to the same.

**12.04.2019**

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**(G.S. Sandhawalia)**  
**Judge**

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

**Yes/No**  
**Yes/No**