

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13195 of 2018
Date of Decision: 01.02.2019

Bhupinder Singh & Ors.

... Petitioners

VS.

The Competent Authority-cum-
Sub Divisional Magistrate, Fatehgarh Sahib & Ors.

... Respondents

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

Present: Mr. CS Bagri, Advocate for the petitioners

Ms. Simran Grewal Randhawa, AAG Punjab

Mr. JS Bhandohal, Advocate for respondent No.2

Mr. DK Singhal, Advocate for respondents No.3&4

G.S. SANDHAWALIA, J. (Oral)

(1) Challenge in the present writ petition is to the order dated 20.03.2018 (P1) whereby respondent No.1 has dismissed the petitioners' application for apportionment of the amount of compensation awarded by the Competent Authority. Vide impugned order, respondent No.1 declined to refer the case to the Principal Civil Court of original jurisdiction on the ground that no useful purpose would be served and came to the conclusion that the ownership question is clearly settled in view of jamabandi for the year 2011-12. It resultantly ordered that the amount of compensation be released in favour of the Gram Panchayat of village Manpur through its care taker i.e. Block Development and Panchayat Officer, Khamano.

(2) Counsel for the petitioner has relied upon judgment passed by this Court in **CWP No.5211 of 2018 Jasvir Singh & Ors. vs. State of Punjab & Ors.** (P5) pertaining to Gram Panchayat Ranwan to submit that the matter is covered in favour of the petitioners.

(3) Counsel for the Gram Panchayat also could not dispute the said proposition.

(4) In view of the fact that the Division Bench in **Nirmal Singh vs. Union of India & Ors., 2012(4) RCR (Civil) 44** has held 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, 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.

(5) It is to be noticed that the dispute has arisen on account of the land being acquired under the National Highway Authority Act, 1956 and an application was filed by the petitioners under Section 3H(4) for referring the matter to the Principal Civil Court of original jurisdiction. The respondent No.1 has thus transgressed into the jurisdiction of the Civil Court while passing the impugned order. The Division Bench in **Nirmal Singh** has held 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."

(6) Counsel for the petitioners further pointed out that in similar

circumstances, the said respondent has referred the matter pertaining to

another village Jattana Niwan, Tehsil Khamano, District Fatehgarh Sahib to the District Judge, Fatehgarh and had also forwarded the compensation to the said Court.

(7) Accordingly, keeping in view the above facts, the writ petition is disposed of and the impugned order dated 20.03.2018 (P1) is quashed. It is further directed that respondent No.1 shall refer the matter to the Principal Civil Court of original jurisdiction within one week from the date of receipt of certified copy of this order. The amount along with interest in view of the interim order dated 23.05.2018 whereby it was directed that the compensation be not disbursed to respondent No.2 and be kept in a Fixed Deposit Receipt to earn the highest rate of interest be also forwarded to the said Court. The Civil Court shall ensure that the amount so received is kept in FDR during the pendency of the case to secure highest rate of interest. The amount would be then disbursed to the successful party at the conclusion of the proceedings.

(8) Ordered accordingly.

01.02.2019

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(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*

Yes

2. *Whether reportable?*

No