

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

CWP-3404-2014 (O&M)

Date of decision: 18.01.2019

Ravinder Singh & others

....Petitioners

Versus

State of Punjab & others

...Respondents

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

Present: Mr.Gurminder Singh, Sr.Advocate
with Mr.Abhinav Oberoi, Advocate, for the petitioners.

Ms.S.G.Randhawa, AAG, Punjab.

Mr.Jagdish Marwaha, Advocate
and Mr.Rahul Marwaha, Advocate, for respondents No.2, 3 & 5.

None for respondents No.7 & 8.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present writ petition has been raised to the order dated 18.12.2013 (Annexure P-13), passed by the Commissioner, Patiala Division, whereby, while exercising the powers of Arbitrator, appointed under Section 20-F(6) of the Railways Act, 1989 (for short, the '1989 Act'), a finding was recorded under issues No.2 to 4 that it would not be possible to pay compensation to the applicants, who are alleged to be vendees of the land purchased from the legal heirs of Sadhu Singh. On account of exclusion of the petitioners, the other two claimants, i.e., Municipal Council Rajpura and Gram Panchayat, Dhamoli, who were claiming their rights in question regarding their right on the land in question it was referred to the competent Civil Court where all the three claimants would get their rights adjudicated on the question of title.

The compensation granted vide the award of the Competent Authority/Land Acquisition Collector, Patiala dated 14.12.2011 (Annexure P-7) was affirmed, except that the 10% non-litigation

allowance was held not admissible. The LAC was asked to deposit the entire compensation amount with the District Judge, Patiala and matter was referred regarding the title, to the same Court, for proper adjudication.

It is pertinent to notice that the said order was challenged by the Municipal Council, Rajpura, respondents No.7 & 8 under Section 34 of the Arbitration & Conciliation Act, 1996 and the order was upheld on 06.01.2016 (Annexure P-16), on the ground that there was no error in the award. The Council had also sought declaration that it was owner of Khasra No.22, Bir Rajpura, Patiala, within the revenue estate of Rajpura. Resultantly, it was held that the award did not suffer from any error and the Arbitrator had not misconducted himself. It is pertinent to notice that some of the petitioners were also the respondents themselves before the Addl.District Judge and have raised challenge to the said proceedings only by way of the present writ petition but did not challenge the same by way of filing any petition under Section 34.

On the other hand, on a reference received, the Competent Authority also referred the matter to the Civil Court of Original Jurisdiction vide Memo No.782 and vide separate order dated 11.07.2016 (Annexure P-17) the Civil Court held that the Competent Authority had not placed on file any order of the Collector that whether the land was *Shamlat Deh* or not. The question was not to be decided by it and was to be decided by the Collector under the Punjab Village Common Land (Regulation) Act, 1961 (for short, the '1961 Act') and sent the

reference back to the Competent Authority, to get the verdict of the Collector whether the land was *Shamlat Deh*.

Senior Counsel for the petitioners has vehemently argued that the matter, as such, already stood settled in favour of the petitioners, by virtue of the order dated 05.11.1997 (Annexure P-1) whereby declaration under Section 11 of the 1961 Act has been decided by the Collector in favour of Bant Kaur and others. The petitioners have claimed to have purchased the land from them and on the strength of being *bona fide* purchasers vide the sale deed dated 08.12.2004, after the award of the Collector dated 05.11.1997 (Annexure P-1) claim compensation. It is further their case that the said order was upheld by the Commissioner on 06.05.1998 (Annexure P-2) and the appeal of the Gram Panchayat was dismissed. The Gram Panchayat having come within the Municipal limits of MC, Rajpura, thus, would have no dispute and therefore, the contest would, thus, continue with respondents No.7 & 8, MC, Rajpura.

It is pertinent to notice that the writ petition filed by the Gram Panchayat was dismissed on 12.10.1998 (Annexure P-3) and thereafter, the matter was upheld by the Apex Court in SLP-19435-1998 on 17.12.1998 (Annexure P-4). Thus, on the strength of the title, as such, having been decided in favour of the petitioners' predecessor-in-interest, the claim of compensation is sought on the ground that the land was acquired under the 1989 Act, vide notifications dated 20.04.2010 (Annexure P-5) issued under Section 20-A and dated 24.12.2010

(Annexure P-6) issued under Section 20-E and the award was eventually passed on 14.12.2011 (Annexure P-7) by the Competent Authority. It is submitted that as per the terms of the award, payment of compensation was to be made to the landowners and interested persons, according to their share and rights as entered in the ownership column of the last jamabandi. Clause 7 reads as under:

“7. MODE OF PAYMENT :

Payment will be made to land owners and interested persons according to the share and rights as entered in the ownership column of the last Jamabandi. However, on account of death of an owner, the compensation would be paid to the legal heirs of the deceased as per revenue record. In case of a dispute, the payment of compensation will be made by a Competent Court of law. It is further clarified that if there is any mistake found out on later stage in area calculation of any plot or any other type of clerical or mathematical mistake the same will be modified and over/under payment by means of this mistake will be recovered/paid from/ to the land owners as per standard rules regarding the matter.

If there is any loan/mortgage charge/amount outstanding on any Khasra No. under acquisition, then the compensation of that portion of land area will be withheld which will be released on the basis of clearance certificate/no dues/non-encumbrance certificate from the concerned Bank/institution/society etc.

Any clerical mistake or error which may have crept in inadvertently during calculations and detected after the announcement of award shall be corrected by a corrigendum of concerned award. Any amount disbursed to the land owners more than what is due to him shall be recoverable and any amount disbursed less than what is due to him shall be

compensated for after proper verification.”

It is, thus, for the land in Bir Rajpura, the claim, as such, has been made for payment of compensation which was deposited to the tune of Rs.29,87,73,221/-. A supplementary award was also passed whereby the said amount has been enhanced to Rs.30,02,67,087/-. An order dated 31.08.2012 was passed by the Commissioner, Patiala Division, who was also appointed as the Statutory Arbitrator vide notification dated 16.06.2010 (Annexure P-8) stopping the payment of compensation after the award had been passed, since land of as many as 18 villages, as such, of Tehsil Rajpura for Railway Freight Corridor for Railway Department was subject matter of acquisition.

The petitioners filed CWP-1171-2013, claiming release of compensation as per the award dated 14.12.2011. A perusal of the said writ petition would go on to show that nowhere in the writ petition an averment was made that the title, as such, had been perfected before the Collector and the Commissioner and upheld uptill the Apex Court and resultantly, payment of compensation was sought. The Division Bench noticed that the order had been passed by the Commissioner on an application, not to disburse any compensation for the *Shamlat* land and accordingly, it was held that the question had to be decided whether or not the said land was *Shamlat Deh* or not, if not already decided by the Collector under the 1961 Act. The order dated 16.07.2013 (Annexure P-11) reads as under:

“The petitioners seek a *Mandamus* for directing the respondent-Authorities to release the amount of compensation

as per the Award dated 14.12.2011 passed by the Designated Authority-cum-District Revenue Officer, Patiala in respect of the acquisition of their land by the Indian Railways for “Special Railway Project” known as Eastern Dedicated Freight Corridor at Patiala.

Respondents No. 1, 2 and 4, namely, Union of India and Indian Railways have filed their reply/affidavit revealing that the amount of compensation has already been deposited by them with the DRO-cum-Designated Authority-respondent No. 3. They have also placed on record a communication to show that the Commissioner, Patiala Division, Patiala has passed an order directing respondent No. 3 not to release any compensation in respect of Shamlat-deh land which vests in the Gram Panchayat and/or Municipal Council, Rajpura, as the case may be. It appears that the petitioners have not been paid the compensation amount as a result of the above stated order of the Commissioner, Patiala Division, Patiala as, the land in question of which the petitioners claim to be *bona-fide* purchasers is also statedly shamlat-deh.

It is obvious that before holding the petitioners entitled to receive compensation, it has to be decided whether or not the subject land is shamlat deh? This question, if already not decided by the Competent Authority, needs to be decided by the Collector under the Punjab Village Common Lands [Regulation] Act, 1961.

The Commissioner, Patiala Division, Patiala, under whose orders the payment of compensation has been withheld, is not a party before us nor the Gram Panchayat or Municipal Council who might be claiming title is a party-respondent. We, therefore, dispose of this writ petition with liberty to the petitioners to approach the Commissioner, Patiala Division, Patiala for modification of the order and to direct respondent No. 3 to release compensation to them. If such an application is moved by the petitioners, we direct the Commissioner, Patiala Division, Patiala to decide the same

after notice to other interested parties, expeditiously but not later than one month from the date of its filing.

Disposed of. Dasti.”

It is in pursuance of the said directions, application was filed before the Commissioner for release of compensation to the petitioners, being the *bona fide* purchasers. As noticed, the Commissioner, while dealing with the said application, permitted the parties to adduce evidence and counter-evidence and also framed issues and has, thus, come to the conclusion adverse to the petitioners. Relevant paras of the order dated 18.12.2013 (Annexure P-13) reads as under:

- “1. Whether Khasra No.22 of Bir Rajpura was included in the Rajpura Municipality on the day when the order of DDPO Patiala dated 5.11.97 was passed?
2. If it was outside the Municipality of Rajpura then it fell in which hadbast number and village.
3. Whether the order of DDPO Patiala was void and binding on the parties.
4. The right holders who were entitled to their share as per 2G (iii)
5. Whether the applicants are entitled to compensation.

xxxx xxxx xxxx

In view of findings of issues no.1,2,3,4 it would not be possible to pay compensation to the applicants who are vendees of this land purchased from the legal heirs of Sh. Sadhu Singh.

As the applicants stands excluded, the other two claimants while are M.C. Rajpura and Gram Panchayat, Dhamoli are claiming their right on the land in question and the matter has again become contentious. In order to arrive at correct decision, it would be in the fitness of things to refer the matter of question of title to competent civil court where all the three

claimants can get their rights adjudicated. The compensation given in the award dated 14-12-2011 by Land Acquisition Collector-Cum-DRO Patiala as Rs.12,000/- per square yard + 30% solatium + 10% Non litigation premium + 12% interest of village Bir Rajpura is in order except that 10% non litigation allowance would not be admissible. The LAC-Cum-DRO, Patiala is directed to deposit the entire compensation amount as determined above with the District and Session Judge, Patiala and also refer the matter of title to the same court for proper adjudication. With the said observations, the present petitions filed in this case are hereby disposed off.”

Senior Counsel for the petitioners has, accordingly, argued that once the question of title, as such, had been decided in favour of the petitioners' predecessor-in-interest, under Section 13 of the 1961 Act and accordingly, referred to Section 20-F(6) that the Arbitrator's terms were only limited to the amount of compensation, which was to be determined, he had no such jurisdiction to adjudicate the matter on the question of title. He has, accordingly, relied upon the communication from the Collector dated 12.10.2016 (Annexure P-18) that the issue of title had already been decided in favour of the petitioners and similarly, the Competent Authority had also addressed a communication dated 04.11.2016 (Annexure P-19) whereby the letter of the Collector had been attached that the compensation amount of Rs.26,98,78,453/-, which was lying deposited, should be disbursed amongst the rightful owners. It is submitted that in such circumstances, no further exercise is to be done. It is, however, fairly pointed out that the matter is still pending consideration in Memo No.782, though, as noticed above, order dated

11.07.2016 has also been passed by holding that verdict of the Collector is to be got whether the land was *Shamlat* or not.

From the above facts and circumstances, it is apparent that the dispute has arisen as to the entitlement of the amount payable as several persons have raised their claim, i.e., Municipal Council, petitioners and are interested in the amount deposited before the District Judge. Section 20H of the 1989 Act reads as under:

“20-H Deposit and payment of amount.-

(1) The amount determined under section 20-F shall be deposited by the Central Government, in such manner as may be prescribed by that Government, with the Competent Authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the Competent Authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the Competent Authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(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.

(5) Where the amount determined under section 20-F by the arbitrator is in excess of the amount determined by the Competent Authority, the arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under section 20-I till the date of actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the Competent Authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government, in such manner as may be prescribed by that Government, with the Competent Authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.

A reading of Sub-section (2) would go on to show that the amount is to be paid by the Competent Authority to the persons entitled and under Sub-Section (3), when several persons claim to be interested in the amount deposited, the Competent Authority shall determine the persons who are, in its opinion, entitled to receive the amount. Under Sub-section (4), if any dispute arises 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 definition of the Principal Civil Court of Original Jurisdiction is defined under Section 24 of the Punjab Courts Act, 1918. The same reads as under:

“24. District Court to be principal Civil Court of original jurisdiction—The Court of the District Judges shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.”

The said provision is para-materia to the provisions of the National Highway Act, 1956 also whereby, if there is any dispute, Section 3-H(4), the matter is to be referred for decision to the Civil Court of Original Jurisdiction. Section 3-H(4) reads as under:

“3H(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** 2012 (4) RCR (Civil) 44 held that the Competent Authority has no jurisdiction to decide on the issue of apportionment. 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.”

This Court in CWP-13700-2018 titled *Dilbagh Singh Vs. Union of India*, on 28.05.2018, had followed the said view and upheld the order referring the matter to the Principal Civil Court of Original Jurisdiction.

The argument which has been raised that the Courts have already decided under the 1961 Act, though attractive at first blush, would not take the petitioners to claim title absolutely, once there is dispute to the amounts payable after the acquisition proceedings of the land which has been acquired. It is always open to the petitioners to

bring to the notice of the Civil Court of Original Jurisdiction the findings recorded under the 1961 Act, on the basis of which they are claiming title of having purchased the property from their predecessor-in-interest who were locked in litigation with the Gram Panchayat. The Civil Court of Original Jurisdiction, keeping in view this aspect, would have to decide the reference as to whose entitlement would be to the amount of compensation which has been deposited. The Reference Court, vide the order dated 11.07.2016 (Annexure P-17), in a cursory manner, has declined to exercise jurisdiction vested in it by law once Reference No.782 had been sent to it by the Competent Authority. Similarly, the Arbitrator has exceeded its jurisdiction while deciding the issue of title and holding it against the present petitioners as it was not within its competence, under the 1989 Act.

The argument which has been raised that Section 13 of the 1961 Act would bar the jurisdiction of the Civil Court, thus, would not come into play once the land stands duly acquired and the dispute is qua the amount payable.

The petitioners claim to have got title on the basis of a sale deed from their predecessors-in-interest who had perfected the title under the 1961 Act. That aspect will also have to be gone into, therefore, they can safely rely upon the same and it is for the Civil Court to examine the issues as to whether the petitioners have got valid title, thereafter, on the basis of their sale deeds, having purchased the property and have a right of compensation. Needless to say this exercise cannot be conducted by

this Court as disputed questions are involved. It is trite law that the Writ Court will not enter into the thicket of disputed facts. Therefore, the matter has to go back to the Civil Court of Original Jurisdiction, who has to take into consideration all the documents which have been placed on record, to see as to what is the interest of the petitioners and how they have perfected their title, as claimed and thereafter, the amount of compensation is to be disbursed to them. The Reference Court is under bounden duty to issue notice to the petitioners and the interested persons, including the Municipal Committee, Rajpura, the Railways and any interested persons who might seek a claim for compensation which has been deposited.

Accordingly, the present writ petition is partly allowed, by quashing the order dated 18.12.2013 (Annexure P-13), to the extent that the petitioners are not entitled for compensation. The observations made in the order dated 11.07.2016 of the Addl.District Judge, Patiala (Annexure P-17) are suffering from illegality and he has failed to exercise jurisdiction vested in him by law, in the above facts and circumstances and will be ignored while deciding the reference petition. The Reference Court will also deposit the amount in a Fixed Deposit Receipt, during the pendency of the litigation, to earn the highest rate of interest, so that the same can be disbursed to the concerned persons, after the final decision.

18.01.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No