

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

205

**CWP No.4465 of 2017 (O&M)
Decided on : 01.10.2019**

Balwinder Singh (Deceased) through his L.Rs.

... Petitioners

Versus

National Highway Authority of India and others

... Respondents

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

Present: Mr. H.S. Batth, Advocate
for the petitioners.

Ms. Anju Sharma Kaushik, DAG, Punjab
for respondents No.2 to 4.

Mr. Vivek Gupta, Advocate
for respondent No.5.

Mr. S.K. Sharma, Advocate
for the respondent No.6.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the order dated 23.05.2015 (Annexure P-10), whereby respondent No.4 has adjourned the matter “sine die” to await the decision of the Civil Court on the ground that respondent No.5-Jarnail Singh has filed proceedings which are pending.

It is pertinent to mention that the suit was for specific performance of an agreement to sell dated 23.04.1973 (Annexure P-1). It is not disputed that the petitioner had also filed an application (Annexure P-3) before the said respondent for getting the payment of the land which was acquired. Paragraph B of the head note of the said application reads as under:-

“B) Or for making reference to the District Judge Sangrur as the principal court of original jurisdiction for decision of amount payable to the applicant as his $\frac{1}{2}$ share out of the acquired land 2 Bighas 12 Biswas and for giving compensation alongwith interest to the applicant.”

A perusal of the said application would also go on to show that there was reference of the civil dispute between Jarnail Singh and Balwinder Singh, the present petitioner before the Court of Civil Judge (Junior Division), Sunam, though the said person had not been impleaded as a respondent. Resultantly, Jarnail Singh had filed an application (Annexure P-9) wherein he sought to be joined as party and that he be heard. It was in such circumstances the impugned order has been passed.

Section 3H (4) of the National Highways Act, 1956 provides that if there is any dispute regarding the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the matter is to be referred to the principal Civil Court of original jurisdiction in whose limits the land is situated. Said section 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.”

It is thus apparent that respondent No.4 instead of adjourning the proceedings sine die should have referred the matter to Civil Court of original jurisdiction, in view of the above mandate of law. The question

is no longer integra. The Division Bench of this Court in '**Nirmal Singh Vs. Union of India and others'** 2012 (4) RCR (Civil) 44 while examining the above said provisions came to the following conclusion:-

“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.”

Accordingly, keeping in view the above the present writ petition is partly allowed to the extent that the order dated 23.05.2016 (Annexure P-10) is quashed. A writ of mandamus is issued to the respondent No.4 to refer the matter to the principal Civil Court of original jurisdiction for adjudication.

OCTOBER 01, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No