

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11755-2021(O&M)
Date of decision: 13 .07.2021

Parkat Singh alias Pargat Singh

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Deepak Chaudhary, Advocate, for the petitioner

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

Through this writ petition, the petitioner prays for issuance of a writ in the nature of Certiorari to quash the order dated 11.06.2021 passed by the District Revenue Officer-cum-competent officer for Land Acquisition, Hisar. The petitioner claims that the order is without jurisdiction as the competent authority under the National Highways Act, 1956 (hereinafter referred to as the 'Act of 1956') has no jurisdiction to decide the dispute.

Some facts are required to be noticed. On 05.06.2013, the Government of India had issued a notification under Section 3A of the Act of 1956 intending to acquire a vast tract of land including the land in dispute. At that time, the petitioner and Smt. Savinder Kaur-wife of Wariyam Singh were recorded as the owners in the revenue record. Thereafter, a declaration under Section 3D of the Act of 1956 was published on 05.02.2014. The owners appear to have sold the land

through registered sale deeds. It may be noted here that although the petitioner has not disclosed this fact in the writ petition, however, at the time of hearing, learned counsel representing the petitioner admitted that the land in question was transferred by executing conveyance deed(s). Ultimately, the competent authority announced the award on 30.01.2015. Pursuant to the aforesaid award, the purchasers i.e respondent no. 4 to 8 were paid compensation on 18.02.2015. The petitioner did not object thereto.

Smt. Suman-respondent no.4- a purchaser appears to have applied for referring the matter to the Arbitrator, under Section 3G(5) of the Act of 1956, for re-determination of the market value of the land acquired. On such reference, the learned Arbitrator enhanced the compensation, which has already been deposited with the competent authority. The petitioner filed a civil suit titled as 'Parkat Singh alias Pargat Singh vs. Smt. Kusum and others' CS/23/2021 alongwith an application for grant of injunction which was dismissed by the court on 05.01.2021. The petitioner has neither annexed the copy of the plaint nor the order dismissing the application for grant of injunction. The petitioner filed an application, under Section 3H(4) of the Act of 1956, before the competent authority for referring the dispute regarding apportionment of the amount to the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The competent authority, after examining the facts of the case, has dismissed the same. Through this writ petition, the petitioner assails its correctness.

Heard learned counsel representing the petitioner at length and with his able assistance perused the paper book. Learned counsel representing the petitioner contends that sub section 4 of Section 3H of the Act of 1956 mandates that whenever a 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 is bound to refer the dispute to the jurisdiction of the Principal Civil Court. He, hence, contends that the order passed is without jurisdiction.

This Bench has considered the submission and proceeds to analyze the same in the facts of the case. Section 3H reads as under:-

Section 3H Deposit and payment of amount.—(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf 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 3G 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 3D till the date of the 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 laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.]”

On careful reading of the above extracted provision, it is apparent that sub section 3 of Section 3H of the Act of 1956, enables the competent authority to determine the persons, who, in its opinion, are entitled to receive the amount payable to each of them. In other words, the competent authority has the jurisdiction to determine the persons who are entitled to receive the amount payable to each of them. Whereas sub section 4 of Section 3H of the Act of 1956 lays down that if any dispute arises as to the apportionment of the amount or to person entitled thereto, the competent authority shall refer the dispute to the jurisdiction of the Principal Civil Court. In the first blush, the provisions of sub-section 3 and 4 of Section 3H of the Act of 1956 appear to be

conflicting, however, on a deeper consideration, it becomes apparent that both the provisions are independent and have to be given effect to. Sub-section 3 of Section 3H of the Act of 1956 uses the expression “*shall determine*” which again is in mandatory form. Similarly, sub section 4 of Section 3H of the Act of 1956 again uses the expression “*shall refer the dispute to the decision of the Principal Civil Court of Original Jurisdiction*”. Hence, a responsibility lies on the Court to make a sincere effort to reconcile both the provisions. In the considered view of this Bench, both the provisions can be easily reconciled. On the one hand, sub-section 3 of Section 3H of the Act of 1956 enables the competent authority to determine the persons who in its opinion are entitled to receive the amount payable to each of them, however, if the competent authority finds that it is unable to determine in the facts of the case or a party, even after determination, applies for referring the dispute 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.

In the present case, the petitioner claims that since the registered sale deeds have been executed after publishing the declaration under Section 3D of the Act of 1956, hence, the sale deeds are not valid. It is not disputed that the civil suit filed by the petitioner is pending. The petitioner's prayer for grant of injunction has already been declined by the court of competent jurisdiction. Under Section 3H(4) of the Act of 1956 the competent authority is required to refer the matter to the civil

court, where the matter is already pending.

Still further, on a careful reading of the impugned order, it is apparent that the petitioner, after having sold the land through registered sale deeds, claims that the sale deeds are a result of fraud. It is not in dispute that as per the revenue record, respondent no. 4 to 8 were owners on the date on which the award was passed. It is also not in dispute that as per the award passed by the competent authority, the amount was paid to respondent no. 4 to 8 and the petitioner did not object. Now the dispute is with respect to the amount enhanced by the Arbitrator. The petitioner after a period of 5 years from the date on which the original award was passed, objects to the disbursement of the amount. While deciding an identical civil writ petition no.12122 of 2021 (Amritpal Singh vs. Union of India and others), this Bench has held as under:-

“5.1 However, the law has to be applied in the facts of each case. The courts can not apply the law in a vacuum. Before following the law, the court is required to carefully examine the facts of the case and then analyse as to whether it would be appropriate to apply the law relied upon. The proposition of law as contended by the learned Senior Counsel for the petition is well settled. Even a bare reading of the provisions of the 1956 Act suggests the same conclusion. The High Court has inherent jurisdiction to prevent the abuse of the process of law.

5.2 The writ is a discretionary relief and whatever may be the merit of the case, in the particular facts and circumstances, the Court may refuse to exercise its prerogative writ jurisdiction. The writ Court is not bound to interfere if the equities and the circumstances do not warrant interference. A writ petition cannot be claimed as a right. A writ in the nature of certiorari under Article 226 of the Constitution is not to be issued in every case regularly/routinely. The writ Court has an enabling power to refuse to issue the writ, if it is satisfied that there was no failure of justice. Reliance in this regard can be placed on the observations made in the

judgment of the Supreme Court in ***A.M.Allison and Another v. B.L.Sen and Others*** AIR 1957 Supreme Court 227. In para 17, it was held as under:-

“17. There are moreover special reasons why we should not interfere with the orders of the Deputy Commissioner, Sibsagar, in these appeals. The matters do not come to us by way of appeal directly from the orders of the Deputy Commissioner, Sibsagar. They were the subject, in the first instance, of proceedings under Article 226 of the Constitution in the High Court of Assam. Proceedings by way of certiorari are “not of course”. (Vide Halsbury's Laws of England, Hailsham Edn., Vol. 9, paras 1480 and 1481, pp. 877-878), The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice, and in these appeals which are directed against the orders of the High Court in applications under Article 226, we could refuse to interfere unless we are satisfied that the justice of the case requires it. But we are not so satisfied. We are of opinion that, having regard to the merits which have been concurrently found in favour of the respondents both by the Deputy Commissioner, Sibsagar, and the High Court, we should decline to interfere”.

It is open to the High Court to refuse to interfere in its extraordinary writ jurisdiction under Article 226, where setting aside an order might result in perpetuating injustice. Manifest injustice is a condition precedent for exercise of a writ jurisdiction under Article 226. In the absence thereof, the Court may refuse to exercise its writ jurisdiction. Where the technical considerations are pitted against the substantial claims, then in such a situation, the Courts of law are required to prefer the cause of substantial justice and not technicalities.

5.3 In the present case, undisputedly, a civil suit filed by the petitioner seeking a declaration that he is the owner in possession of the land and that the sale deed dated 08.08.2012 is a result of fraud and conspiracy hatched by the defendants, is already pending for the last

approximately six years. Therefore, at this stage whether it will be appropriate for the High Court to set aside the order passed by the competent authority and refer the parties to the Principal Civil Court for decision? It would be appropriate to note here that as per the provisions of the General Clauses Act, 1897, the Principal Civil Court shall be the Court of the District Judge or the Additional District Judge. The suit filed by the plaintiff is pending in the Court of Civil Judge, Ludhiana. Learned senior counsel representing the petitioner has fairly disclosed that petitioner's prayer for grant of temporary injunction stands rejected by the trial Court. The appeal filed by the petitioner was also dismissed on 20.10.2017. Learned senior counsel has disclosed that the petitioner now intends to file a revision petition.

5.4 xxx

5.5 xxx

5.6 Still further, this matter can be examined from another angle. It is not in dispute that the decision in the civil suit shall cover the decision on the dispute which the petitioner wants the Writ Court to refer to the Principal Civil Court under the 1956 Act. The correctness of the judgment and decree to be passed by the Civil Judge, can be challenged in an appeal before the Court of District Judge. If the matter is now referred, it would result in the pendency of the dispute simultaneously in two different Courts which would not be an ideal situation and would further lead to lengthy successive litigation. The writ court before issuing a writ is also required to carefully analyse its impact.”

Keeping in view the aforesaid discussion, the petitioner has failed to make out a case for issuance of the writ.

Hence, dismissed.

All the pending miscellaneous applications, if any, also stand disposed of.

13.07.2021

rekha

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No

(ANIL KSHETARPAL)
JUDGE