

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 12122 of 2021 (O&M)

Date of Decision: 13.07.2021

Amritpal Singh

... Petitioner(s)

Versus

Union of India and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Aashish Chopra, Senior Advocate
with Mr. G.S.Virk, Advocate
for the petitioner.

Anil Kshetarpal, J.

1. The petitioner, by filing the instant writ petition on 06.07.2021, assails the correctness of the order passed on 07.02.2018 by the Competent Authority-cum-Sub Divisional Magistrate (West), Ludhiana, in the exercise of powers conferred by Section 3H of the National Highways Act 1956 (hereinafter referred to as “the 1956 Act”). In essence, the petitioner prays that the dispute with respect to entitlement of compensation for acquisition of a piece of land under the Act, 1956 should have been referred by the competent authority to the Principal Civil Court of the district, in accordance with Section 3-H(4) of the 1956 Act.

2. In the considered view of this Court, the following question arises for determination:-

“Whether it would be appropriate for the Writ Court to again refer the dispute with respect to the entitlement of compensation for acquisition of land under the 1956 Act to the

decision of the Principal Civil Court of the District, particularly when the same matter is already pending for adjudication between the same parties for the past six years in the Civil Court of competent jurisdiction capable of granting the desired relief?”

FACTS:

3. Some facts are required to be noticed. The petitioner claims to be the owner in possession of the land measuring 15 kanals 16 marlas, as detailed in para 2 of the writ petition. Whereas respondent No.4 claims to be the owner of the land measuring 7 kanals 8 marlas out of the above referred land on the strength of the registered sale deed dated 08.08.2012 executed by the petitioner through his power of attorney (dated 12.12.2011) - Komal Jain. The petitioner has already filed a civil suit on 06-08-2015. In the civil suit, he seeks a declaration that the sale deed dated 08.08.2012 is a result of fraud and conspiracy hatched between the defendants and he continues to be the owner in possession of the land. The plaintiff has also prayed for a decree of permanent injunction.

3.1. During the pendency of the suit, the Union of India issued a notification on 05.07.2017 expressing its intention to acquire a vast tract of land including the land measuring 7 kanals 8 marlas as referred to above. In the year 2018, the petitioner filed an application under Section 3H requesting the authority not to disburse the amount of compensation. On 07.02.2018, the competent authority rejected the application while refusing to refer the dispute to the Civil Court. Thereafter, he filed the Civil Writ Petition No. 5808 of 2018 seeking directions to the competent authority to

decide the application. On being pointed out that the application already stands rejected, the writ petition was disposed of, vide an order dated 27.02.2019, as infructuous while permitting him to challenge the order dated 07.02.2018. In the meantime, the petitioner has continued to prosecute the proceedings in the civil court.

3.2. It is not in dispute that the amount of compensation assessed by the competent authority stands paid to respondent No.4. On his application under Section 3G, the dispute with regard to re-determination of the amount of compensation for acquisition of the land was referred to the Arbitrator. The petitioner also filed an application before the Arbitrator. The application filed by the petitioner was dismissed, whereas the claim of respondent No.4 for re-determination of the amount was allowed vide an award dated 08.06.2021.

3.3 Now after a period of 2 years and 4 months from the disposal of the previous writ petition, the petitioner assails the correctness of the order dated 07.02.2018.

Arguments of Learned Senior Counsel

4. Learned senior counsel representing the petitioner contends that under sub-section 4 of Section 3H of the 1956 Act, the competent authority has no jurisdiction to decide the dispute as to apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable. He submits that the competent authority is required to refer the dispute to the decision of the Principal Civil Court of original jurisdiction. In support of his arguments, he relies upon the following judgments:

- i) ***Nirmal Singh v. Union of India 2012(1) PLR 387.***

- ii) *B.L.Sridhar and Others v. B.R.Pathi and Others (Writ Appeal Nos. 114-117 of 2011).*
- iii) *Ram Sarup and Others v. Union of India and Others 2016(4) PLR 29.*
- iv) *Bhanudas S/o Bhagwan Gote and Others v. Vitthal S/o Haribhau Gote and Others 2020(5) AIR Bom. R 92 = 2021(1) BCR 66.*

Analysis by the Bench

5. This Bench has carefully considered the submissions of learned senior counsel representing the petitioner and with his able assistance, perused the paper-book. No doubt, two Division Benches of this Court in *Nirmal Singh(supra)* and *Ram Sarup (supra)*, respectively, have held that if any dispute arises as to 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 under an obligation to refer the dispute to the Principal Civil Court of the District. The two other High Courts have also laid down on the same lines.

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 Be that as it may. If the matter is now referred then identical questions/issues/points of determination shall be required to be adjudicated by two different courts of competent jurisdiction, simultaneously. This would not only lead to multiplicity of proceedings, but may also result in conflicting decisions. In these circumstances, this Bench is of the considered view that it would not be appropriate to refer the dispute to the decision of the Principal Civil Court in the facts of the present case.

5.5 The writ petition also suffers from unexplained delay and laches. On 27.02.2019, the previous writ petition filed by the petitioner was disposed of with a liberty to challenge the order passed on 07.02.2018. The petitioner has filed this writ petition after an unexplained delay of 2 years and 4 months. In the meantime, the civil suit filed by the petitioner has remained pending.

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.

5.7 This matter can be examined from yet another perspective. If a

party is entitled to seek remedy before two or more equally competent Courts of law, then it is expected that it will elect a remedy. Once he elects a particular remedy, then subsequently he cannot be permitted to jump to another one and if permitted, it would not only lead to multiplicity of proceedings but also can give rise to conflicting decisions which shall not be in the interest of justice. Once the petitioner has elected to continue with the Civil Suit, then at this belated stage, it would not be appropriate for the Court to direct another Court to start *de novo* proceedings on the same subject matter. If the course as suggested by the learned senior counsel is adopted, it would not only lead to delay in delivery of justice but would result in parallel proceedings as well.

6. Keeping in view the aforesaid facts, this Bench does not find it appropriate to issue the writ as prayed for. However, it is declared that the order passed by the competent authority on 07.02.2018 shall be subject to the decision of the Civil Court.

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 13, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No