

Present- Mr. Sunil Nehra, Advocate for applicant/respondent No.3
Mr. Neeraj Gupta, Advocate for the petitioner.

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

On 01.07.2021, while disposing of the writ petition on the very first date of hearing, the following order was passed:-

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

The petitioner claims to be co-owner in a joint land which has been acquired under the National Highway Act, 1956. Two separate awards were passed by the competent authority. On 30.06.2020 the award with respect to the land was passed whereas on 11.12.2020 the award with respect to the structure was passed.

It appears that the petitioner filed an application on 22.12.2020 before the competent authority for apportionment of the amount with respect to construction. The competent authority on inquiry found that the construction belongs to Smt. Krishna Devi, another cosharer.

Through this petition, the petitioner assails the correctness of the order dated 17.06.2021 passed by the competent authority directing the payment of compensation with regard to the structure to Krishna Devi. Learned counsel representing the petitioner contends that the competent authority has no jurisdiction to order apportionment of the compensation to a particular co-owner as the same lies within

the domain of a competent civil court. In order to appreciate the argument, it is important to examine the statutory provision. Section 3H(4) of the National Highway Act, 1956, is extracted as under:-

“Section 3H(4) in The National Highways Act, 1956

(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 not in dispute that the petitioner never requested the competent authority 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. There is no bar for the petitioner to apply for now referring the dispute of apportionment to the civil court even. The amount payable as per the award is stated to be more than Rs.42,00,000/.

Keeping in view the aforesaid facts, the writ petition is disposed of with liberty to the petitioner to make an application before the competent authority, within one week from today, for referring the dispute to the Principal Civil Court of original jurisdiction, in accordance with sub section 4 of Section 3-H. If such an application is filed, the competent authority shall refer the dispute to the Principal Civil Court of original jurisdiction within one month thereafter. Till then, the competent authority shall not disburse the amount. Once the matter, as noticed above, is required to be referred to the court, the petitioner shall be at liberty to file an application for interim direction before the Civil Court.

Since the present order has been passed without issuing notice to Smt. Krishna Devi, who has not been impleaded as a party respondent in the writ petition, she will be at liberty to

file an application for modification.

Disposed of.

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

Through this application (CM-9621-CWP-2021), the applicant prays for her impleadment as respondent No.3. For the reasons stated in the application, the application is allowed. Respondent No.3-Krishna Devi is permitted to assist the Court.

RA-CW-150-2021

The applicant/newly added respondent No.3 prays for review of the judgment dated 01.07.2021 on the ground that the order was passed without hearing the applicant. Learned counsel further contends that the amount determined by the competent authority has been disbursed to respondent No.3-applicant on 07.06.2021.

The learned counsel representing the petitioner further contends that sub-section 3(H) of the National Highways Act, 1956 (in short '1956 Act'), do enable the competent authority to determine the persons who in its opinion are entitled to receive the amount payable to each of them. He, hence, contends that the competent authority has already decided the matter.

This Bench has re-heard the entire matter. No doubt, sub-section 3 of the 1956 Act, do enable the competent authority to decide the entitlement of the persons who in its opinion are entitled to receive the amount, however, sub-section 4 provides that the competent authority shall

refer the dispute to the decision of the Principal Civil Court of original jurisdiction of the District when 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 Division Bench in **Nirmal Singh Vs. Union of India, 2012 (1) PLR 387** has held if there is a dispute with regard to apportionment or entitlement, the competent authority has no jurisdiction. The aforesaid judgment was followed by another Division Bench in **Ram Sarup and others Vs. Union of India and others, 2016 (4) PLR 29**.

Keeping in view the aforesaid binding precedents, this Bench expresses its inability to accept the argument of learned counsel for respondent No.3. However, since the amount has already been disbursed to respondent No.3, therefore, the competent authority is requested to forward the application seeking reference to the Civil Court forthwith.

Needless to observe that the decision of the Court would be binding upon the parties. Accordingly, the order dated 01.07.2021 is modified to the aforesaid extent.

Disposed of.

06.08.2021
ashok

(ANIL KSHETARPAL)
JUDGE