

CWP No.21096-2022 (O&M)

Date of decision: 29.11.2022

Manjinder Singh and another

....Petitioners

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P. K. S. Phoolka, Advocate for the petitioners

Mr. K. S. Kang, Sr. DAG, Punjab for
respondent No.3, 4 and 8.Mr. Ashok Singla, Advocate for
respondent No.5 and 7.**ANIL KSHETARPAL, J (Oral)**

1. In brief, the dispute between the parties has been noticed in the order dated 15.09.2022, which is extracted as under:-

“The petitioners pray for issuance of a writ in the nature of certiorari to quash the notice dated 29.08.2022 issued by the Competent Authority (Land Acquisition Collector-cum-Sub Divisional Magistrate), Bathinda. Pursuant to the compulsory acquisition of the land vide award dated 07.11.2014, in exercise of powers under the National Highways Act, 1956 (hereinafter referred to as “the 1956 Act”), the petitioners were paid a sum of Rs.1,45,64,094/-. There was some dispute inter se between the various persons as the private respondents claim to be the co-sharers in the acquired land. The suit filed by the private respondents for grant of decree of permanent injunction restraining the Competent Authority to release the amount to the petitioners has been dismissed by the Civil Court on 12.02.2020. On a request made, the matter was referred by the Competent Authority (Land Acquisition) to the competent Civil Court under Section 3H(4) of the 1956 Act. In those proceedings, the petitioners have already filed an application for grant of stay, which is pending. The Competent Authority (Land Acquisition) has also been impleaded as a party. However, shockingly, the Competent Authority (Land Acquisition) has issued

notice for auctioning the property of the petitioners. Prima facie, the action of the Competent Authority (Land Acquisition) is not only illegal, but perverse as well.

Notice of motion.

On the request of the Court, Mr. Sandeep Chopra, Deputy Advocate General, Punjab, accepts notice on behalf of the respondent No.3, 4 and 8.

Let notices be issued to the respondent No.1, 2, 5, 6 and 7 for 23.09.2022.

In the meantime, the Competent Authority (Land Acquisition) is restrained from going ahead with the auction of the petitioners' property. The Competent Authority (Land Acquisition Collector-cum-Sub Divisional Magistrate), Bathinda, shall be required to be present in the Court on the next date of hearing, in order to explain his conduct.

The Registry is directed to list the present writ petition for hearing in the urgent list, on the date fixed."

2. Admittedly, the case before the Competent Court (Principal Civil Court) in terms of Section 3H of the National Highways Act, 1956, is still pending. Section 3H of National Highways Act, 1956 is extracted 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.]”

3. Once the matter has been referred to the Principal Civil Court of Original Jurisdiction to decide the dispute with regard to the apportionment of the amount of compensation to any person to whom full amount of compensation or part thereof is payable, the court is required to pass the necessary orders in that regard. The Sub Divisional Magistrate, who was nominated as the competent authority for the land acquisition has no jurisdiction to exercise the parallel powers to recover the amount. The Civil Court is seized of the matter. There is no decision, interim or final, by the Competent Court with regard to the entitlement of the parties to the said amount or apportionment of the compensation. At this stage, the competent authority should not interfere. Such matter is required to be decided only by the Competent Court i.e. Civil Court. Accordingly, the notices dated 29th August, 2022 are quashed. The competent authority is directed to be careful in the future.

Learned counsel representing the private respondents submits that the Deputy Commissioner has passed the orders declaring that the amount paid to the petitioners is liable to be recovered as the arrears of land revenue.

5. The Deputy Commissioner of the District also has no jurisdiction under the National Highways Act, 1956, to pass the impugned order. There is no provision in the Act, which authorizes the Deputy Commissioner to pass any order outside the ambit of the Act. Hence, the order passed by the Deputy Commissioner is beyond the scope of the Act. Consequently, the said order is without jurisdiction.

6. Disposed of.

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

29.11.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE