

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22766-2021

Date of decision: 02.03.2022

RAJ SINGH

..Petitioner

Versus

UNION OF INDIA AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Abhilaksh Gaiind, Advocate
and Mr. Rakesh Roy, Advocate
for respondent No.1 and 2.

Mr. Harsh Vardhan, AAG, Haryana
for respondent No.3.

Mr. Varun Gupta, Advocate
for respondent No.4.

ANIL KSHETARPAL, J.

The petitioner prays for issuance of a writ in the nature of certiorari to quash an order dated 01.10.2021, passed by the competent authority for the acquisition of land nominated under National Highways Act, 1956 (hereinafter referred to as “the 1956 Act”). It has been held that the respondent No.4 is entitled to the amount of compensation for the compulsory acquisition of the land on the ground that she was the owner of the acquired land on the date of LAC awards dated 07.03.2019 and 06.09.2019. Whereas, the petitioner claims apportionment on the ground that out of the acquired land 2 Kanals 11 Marlas had been purchased by him from respondent No.4 vide a registered sale deed dated 09.10.2019, with respect to 10 Kanals 2 Marlas of land on payment of a total sale

consideration of Rs.15,00,000/-.

It may be noted here that the dispute is with regard to the entitlement of the compensation, with respect to aforesaid 2 Kanals and 11 Marlas of land, and the amount has already been paid to respondent No.4. It is significant to note that the plaint of the suit filed by respondent No.4 has been rejected by the Court on 23.09.2020, while exercising powers under Section 7 Rule 11 of the Code of Civil Procedure, 1908.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

Section 3H of the 1956 Act is extracted as under:-

“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 subsections (2) to (4) shall apply to such deposit. ”

On a careful reading of Sub-Section 3 of Section 3H of the 1956 Act, it is evident that the competent authority is under a legal obligation to determine the persons/landowners who in its opinion are entitled to receive the compensation amount payable after the compulsory acquisition of land. Sub-Section 4 of Section 3H of the 1956 Act, mandates 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, 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 respondent No.4 claims that the aforementioned sale deed is a result of misrepresentation and deceit on the part of the petitioner.

In the considered view of the Court, with respect to the facts and circumstances of the present case, the competent authority has erred in deciding the dispute. As, there was a dispute with regard to validity of a sale deed allegedly executed by respondent No.4 which required a detailed analysis of the evidence to be produced by the parties, the competent authority ought to have referred the matter to the principal civil court as envisaged in the Sub-Section 4 of Section 3H of the 1956 Act. The competent authority has observed that as on the date of awards, respondent No.4 was recorded as an owner, therefore, the payment has to be released to her. It may be noted here that on the date when the amount of compensation was sought to be released, the alleged ownership rights in the acquired

property stood transferred by a registered sale deed in favour of the petitioner. It may be noted here that this Court has not expressed any opinion on the validity of the sale deed which shall be decided by the competent Court. It is not the case of respondent no.4 that the sale deed executed by respondent No.4 has been set aside or declared illegal by any competent Court of jurisdiction. A sale of the property after issuance of notification for compulsory acquisition of the land may not affect the rights of the acquiring authority or beneficiary of the acquisition, however, these transactions do bind the parties to the documents.

The scope of power of the competent authority with reference to Section 3H of the 1956 Act has already been interpreted by the Division Bench of this Court. Reference in this regard can be made to the judgment passed in “Nirmal Singh Vs. Union of India 2012(1) PLR 387”.

The learned counsel representing respondent No.4 relies upon the following judgments:-

- i. *Harbans Lal Gupta Vs. Union of India, LPA No.334 of 2018.*
- ii. *Surya Kuer & others Vs. State of Bihar, 2018 AIR(Patna) 102.*
- iii. *Nanak Chand Vs. Union of India, 2016(119) ALR 777.*
- iv. *Aashrafbee Maujan Inamdar Vs. Competent Authority 2015 MCR 633.*
- v. *Sudhanshu Kumar Vs. Land Acquisition Officer, 1961 AIR(Patna) 150*

This Bench has carefully perused the judgment passed in

Harbans Lal Gupta's case (Supra). The Division Bench while noticing that the acquired land was still a part of the joint land holding on the date of award and the application for seeking partition as well as an order of partition were subsequent thereto, therefore, the Court decided the case in particular manner while keeping in mind the present status of the acquired land. It was in that context, the Division Bench held that there was no requirement of referring the matter to the principal civil court.

This Bench has also perused the judgment passed by the Patna High Court in **Surya Kuer and others case (supra)**. In the aforesaid case also, the Court in the facts of the case held that the appellant cannot be relegated back under Section 3H(4) of the 1956 Act. Similarly, in **Nanak Chand's case (Supra)**, the Court while interpreting Section 3H of the 1956 Act, has held that the competent authority after noticing that the petitioner could not produce any valid title, correctly passed the order. Similarly, in **Aashrafbee Maujan Inamdar's case (supra)**, the Bombay High Court decided the case on the basis of facts. Again, in **Sudhanshu Kumar's case (supra)**, the Division Bench of the Patna High Court while interpreting Section 30 of the Land Acquisition Act, 1894, passed the order. Hence, the judgments relied upon by the learned counsel representing the respondent No.4 are not applicable to the facts of the case.

Keeping in view the aforesaid facts, the order in question passed by the competent authority on 01.10.2021 (Annexure P-4), is set aside while directing the competent authority for land acquisition to refer the matter to the principal civil court of original jurisdiction as provided under Section 3H(4) of the 1956 Act, forthwith. The Court before whom the matter

is referred to, shall also decide on the mode/manner of securing the amount which has already been paid to respondent No.4. The parties through their counsel are directed to appear before the competent authority for land acquisition on 21.03.2022.

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

02nd March, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No