

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-5616-2023 (O&M)
Date of Decision: 09.10.2023**

Armaan Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. J.S. Gill, Advocate for the petitioner.

Ms.Lavanya Paul, Deputy Advocate General, Punjab, with
Mr. Harjinder Singh, SDM, Ludhiana (West).

Mr. Sukesh Kumar Jindal, Advocate
for respondent Nos.1 and 2.

Mr. M.S. Batth, Advocate for respondent No.4.

Mr. Sachin Bhardwaj, Advocate for
Ms. Nidhi Bansal, Advocate for respondent No.5.

HARKESH MANUJA, J. (oral)

CM-11376-CWP-2023

Application is allowed as prayed for, subject to all just exceptions. Annexure P-8 is taken on record.

Main case:

1. Present civil writ petition has been preferred under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari, quashing the order dated 19.09.2022

(Annexure P-6) passed by respondent No.3-Competent Authority Land Acquisition-cum-Sub Divisional Magistrate, Ludhiana (West), whereby the amount of compensation falling to the share of deceased-Bhag Singh son of Chanan Singh has been ordered to be sent to the Reference Court-cum-Principal Civil Court in terms of Section 3H(4) of the National Highways Act, 1956 (hereinafter referred to as '1956 Act') on an application moved at the instance of Maninder Singh s/o Avtar Singh, who is real nephew of deceased-Bhag Singh.

2. In the present case, vide Notifications dated 22.05.2020 and 22.10.2020, under Section 3-A and Section 3-D of 1956 Act, certain land owned by five sons of Chanan Singh, namely, Harbhag Singh, Bhag Singh, Harcharan Singh @ Charan Singh, Avtar Singh and Darshan Singh, was acquired and the award was announced on 22.03.2021 under Section 3-G of the 1956 Act. Out of five brothers, Bhag Singh was unmarried/issueless.

3. During acquisition proceedings, unfortunately Bhag Singh expired on 01.07.2020. Against the claim set up by the present petitioner, based on the registered Will dated 16.01.2017 qua the estate of deceased-Bhag Singh, a counter claim was raised by Avtar Singh claiming 1/4th share based on natural succession/inheritance. In this regard Avtar Singh even filed a civil suit dated 08.07.2020 seeking declaration, which is pending consideration.

4. In a separate but related development, Avtar Singh-respondent No.5 through his son Maninder Singh also moved an

application before respondent No.3 seeking reference of the dispute regarding apportionment of compensation against the acquired land, in terms of Section 3H(4) of 1956 Act. Upon consideration on the said application, respondent No.3 vide order dated 19.09.2022 forwarded the dispute pertaining to the disbursement of compensation falling to the share of deceased-Bhag Singh to the Principal Civil Court of original jurisdiction in terms of Section 3H(4) of 1956 Act.

5. Impugning the aforesaid order dated 19.09.2022 in the present petition, learned counsel for the petitioner submits that admittedly, Chanan Singh had five sons and even if the claim of the petitioner, based on the registered Will dated 16.01.2017 was to be considered in view of the pendency of civil suit in the absence of there being no dispute at the instance of other successors, at best, Avtar Singh or his LRs could claim $1/4^{\text{th}}$ share out of the share of compensation falling to the share of deceased-Bhag Singh, thus, the entire amount of compensation could not be forwarded to the Principal Civil Court of original jurisdiction by referring the entire dispute about the estate of deceased-Bhag Singh.

6. On the other hand, learned counsel appearing for respondent No.5, vehemently submits that the claim of the petitioner on the basis of registered Will dated 16.01.2017 was already sub-judice before the Civil Court and thus, he cannot claim the entire amount of compensation falling to the share of deceased-Bhag Singh. He also

submits that petitioner was claiming only on behalf of his predecessors, they being not coming forward.

7. Learned State counsel submits that once the amount qua the share of deceased-Bhag Singh already stands transmitted to the Principal Court of original jurisdiction, the claim made by the petitioner cannot be considered and was required to be dealt with only in the apportionment proceedings.

8. I have heard the learned counsel for the parties and gone through the paper-book.

9. In the facts of the present case, admittedly the dispute pertains to the compensation falling to the share of deceased-Bhag Singh, who was one of the five brothers and died unmarried-issueless. Avtar Singh has set up his claim qua $1/4^{\text{th}}$ share, on the basis of natural succession against the claim of petitioner which is based on the Registered Will dated 16.01.2017 qua the entire amount of compensation falling to the share of deceased-Bhag Singh. Avtar Singh being one of the four surviving brothers of deceased-Bhag Singh, undisputedly and at best, relying upon natural succession could claim $1/4^{\text{th}}$ share out of compensation payable to deceased-Bhag Singh. Thus, no dispute beyond $1/4^{\text{th}}$ share of compensation payable to deceased-Bhag Singh could have been referred/deposited by respondent No.3 before the Principal Civil Court of original jurisdiction of concerned place in terms of Section 3H(4) of 1956 Act especially there being no dispute or claim having been set up by any other heir of deceased-Bhag

Singh. Accordingly, the remaining amount of compensation being the $\frac{3}{4}$ th share of deceased Bhag Singh was required to be offered to the remaining successors, besides, petitioner, having not raised any claim qua it, who may have consented its release in favour of the present petitioner admitting or denying the execution of the Will dated 16.01.2017 by filing their respective affidavits.

10. Once the maximum claim/relief which Avtar Singh or his successors could have got in proceedings under Section 3H(4) of 1956 Act was to the extent of $\frac{1}{4}$ th share out of the estate/compensation left by deceased-Bhag Singh, nothing beyond that could have been retained/referred/deposited by respondent No.3 before the Principal Civil Court of original jurisdiction of concerned place, as by doing so respondent No.3 has travelled beyond its authority/jurisdiction by expanding the dispute which never existed, in the absence of any claim made by other three brothers of deceased-Bhag Singh or even by their successors.

11. In view of the above facts and circumstances, the present petition is allowed in view of the aforesaid terms & the order dated 19.09.2022, referring the entire dispute qua the claim of deceased-Bhag Singh under Section 3H(4) of 1956 Act is ordered to be modified in terms of the aforesaid discussion. Since learned State counsel has submitted that the entire amount of compensation falling to the share of deceased-Bhag Singh already stands deposited with the Principal Civil Court of original jurisdiction in terms of order dated 19.09.2022 passed

by respondent No.3 - Competent Authority Land Acquisition-cum-Sub Divisional Magistrate, Ludhiana (West), on 15.11.2022, respondent No.3 is directed to move an application before the Principal Civil Court of original jurisdiction for return of 3/4th of the same, so as to comply with the aforesaid directions. Appropriate application in this regard be filed within a period of 4 weeks from the receipt of certified copy of this order. Resultantly, the reference order dated 19.09.2022 shall remain only qua 1/4th share of deceased-Bhag Singh.

12. It is made clear that in case, any other successor of deceased-Bhag Singh raises any dispute qua the Registered Will dated 16.01.2017 before respondent No.3 at the time of release of compensation in favour of the petitioner and fails to file his affidavit in support thereof, the same be also referred under Section 3H(4) of 1956 Act. The aforementioned exercise be concluded within a period of three months from today.

13. Pending application(s), if any, shall stand(s) disposed off.

09.10.2023

Mangal Singh

**(HARKESH MANUJA)
JUDGE**

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No