

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-7450-2016
Date of decision: 15.05.2023

BALDEV SINGH & ANOTHERPetitioner

VERSUS

STATE OF PUNJBA AND OTHERSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Dilpreet Singh Gandhi, Advocate and
Mr. Ajay Rana, Advocate
for the petitioners.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India for seeking issuance of directions to the respondents to release the cheque/payment to the petitioners that was assessed for the land owned by the petitioners which had been acquired for National Highways.

2. Briefly summarized the facts of the present case are that the petitioners, who are residents of village Gadriwala, Tehsil Zira, District Ferozepur, claim to be Mushtarka Malkan qua land measuring 518 kanals 12 Marlas 1 Sarsahi. The said land is stated to have been acquired by the NHAI

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for construction of National Highway-15. The award was declared regarding different villages in which the land was acquired and even in the said award, the aforesaid land was shown as Mushtarka Malkan. However, the compensation qua the acquired land has not been disbursed to the petitioners. A representation in this regard was statedly submitted by the petitioners to the Sub Divisional Magistrate-respondent No.2 which was marked to respondent No.4 for submission of a report. The concerned Patwari reported the land to be Mushtarka Malkan. However, the payment has not been disbursed amongst the proprietors despite the report. A legal notice was thereafter sent to the respondent No.2 on 05.08.2015 requesting not to release the compensation to the Panchayat for the said land, however, no decision was taken thereupon. A reference was made to the judgment of ***“Jai Singh versus State of Haryana”*** to contend that the proprietary interest in the Jumla Malkan land vested with the land owners and the petitioners are entitled to disbursement of compensation in their favour.

3. Reply on behalf of respondents No.1 to 4 had been filed in 2016 wherein it was specifically pleaded that the Gram Panchayat Gadriwala has not been impleaded as a party and that the petitioners have wrongly instituted the petition against respondent No.5 who was the then Sarpanch. Since the deposit in question was in favour of the Gram Panchayat and not in favour of respondent No.5, the relief as prayed for cannot be awarded for want of proper parties. The right of the petitioners was also denied by the respondents on the ground that the land had been kept by the department of consolidation for utilization and common purposes of the village and as such, the petitioners would not be entitled to the receipt of the compensation for the acquisition of the land.

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4. The dispute in the present case pertains to apportionment/disbursement of the compensation to the petitioners who claim to be owners of the Jumla Malkan and hence entitled to receipt of compensation whereas the stand of respondents is that the land had been reserved under the consolidation scheme for the common purposes of the village and as such the Gram Panchayat would be entitled to the compensation as assessed for acquisition of the said land.

5. The provisions of National Highway Authority of India Act, 1956 prescribe the determination of the compensation as well as the deposit in payment of the amount. Section 3-H of the National Highways Act, 1956 draws a special reference and is extracted as under:

Section 3H in The National Highways Act, 1956

1[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.]

(Emphasis supplied)

6. Even though the reply on behalf of respondents No. 1 to 4 had been filed in the year 2016, however, no replication/counter-affidavit controverting aforesaid assertion had been filed by the petitioners despite a period of nearly 07 years.

7. A perusal of the aforesaid provision clearly shows that where several persons claim to be interested in the amount deposited under Sub Section-1, the competent authority is required to determine the persons who, in its opinion, are entitled to receive the amount payable to each of them and if the dispute arises as to the apportionment of the amount or any part thereof, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limit of whose jurisdiction the land is situated.

8. The dispute agitated before this Court pertains to entitlement and/or apportionment of the compensation and the statutory remedy

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prescribed under the Act is either to approach the competent authority and/or a reference may be so made by the competent authority to the Principal Civil Court of original jurisdiction. A mis-declaration has infact been made in Para No. 17 of the present writ petition about non-availability of any alternative remedy. Since an efficacious alternative remedy is available to the petitioners under the statue, the present petition is dismissed at this stage.

9. The parties may, if so advised, take recourse to the remedies available to them in accordance with the provisions of the National Highway Authorities Act, 1956 for seeking disbursement/apportionment of the compensation.

(VINOD S. BHARDWAJ)
JUDGE

MAY 15, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No