

²⁶⁵ **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-34601-2019

Decided on:-03.10.2023

Joginder Singh and others

....Petitioners...

vs.

The Sub-Divisional Magistrate-cum-Competent Authority-cum-Land
Acquisition Collector, SAS Nagar, Mohali and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Naresh Kaushal, Advocate,
for the petitioners.

Ms. Lavanya Paul, DAG, Punjab,
for respondent No.1-State.

Mr. Ashdeep Singh, Advocate
for respondent No.3-Gram Panchayat.

HARKESH MANUJA J. (Oral)

1. By way of present writ petition, challenge has been laid to an order dated 31.07.2019 passed by the Sub-Divisional Magistrate-cum-Competent Authority-cum-Land Acquisition Collector, SAS Nagar, Mohali-respondent No.1, whereby an application seeking apportionment of compensation, filed at the instance of petitioners, has been adjudicated upon merits.

2. Briefly stating, land situated in the revenue estate of Village Rurki Pukhta, Hadbast No.74, Tehsil Kharar, District SAS Nagar, Mohali, came to be acquired for the purpose of building (widening/four laning etc.) maintenance, management and operation of National Highway No.5. Award

No.79 dated 07.01.2019, was passed under Section 3-G of the National Highways Act, 1956 (hereinafter referred to as “1956 Act”) by respondent No.1.

3. Claiming themselves to be khewatdars of Village Rurki Pukhta, petitioners moved an application dated 22.04.2019 before respondent No.1 with a prayer to refer the dispute regarding apportionment by invoking Sub-section (4) of Section 3H of the 1956 Act.

4. Respondent No.1, vide order dated 31.07.2019, took it upon itself to adjudicate the issue of apportionment rather than sending the same to Reference Court for its decision in terms of Sub-section (4) of Section 3H of the 1956 Act.

5. Impugning the aforesaid order passed by respondent No.1, learned counsel for the petitioners while relying upon a Division Bench judgment of this Court passed in “*Nirmal Singh vs. Union of India and others*” cited as 2012 (4) RCR (Civil) 44, submits that in case of apportionment, the Collector has to refer the dispute to the Principal Civil Court of original jurisdiction, rather than deciding the same on its own and thus, the impugned order is liable to be set aside.

6. Reply by way of affidavit of Smt. Sarbjeet Kaur, Land Acquisition Collector-cum-Sub Divisional Magistrate, Mohali on behalf of respondent No.1, has been filed in Court today and the same is taken on record.

7. Learned counsels representing the respondents submit that the impugned order has been passed by the Sub Divisional Magistrate-cum-Competent Authority-cum-Land Acquisition Collector-respondent No.1,

after having gone through the revenue documents, wherein, Gram Panchayat has been recorded as owner in possession of the land in question and thus, the same does not warrant any interference by this Court.

8. I have heard learned counsels for the parties and gone through the record. I find substance in the submissions made on behalf of the petitioners.

9. For reference, Section 3H (4) of the 1956 Act, is reproduced hereunder:-

“3H(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.”

A plain reading thereof, makes it clear that in case any dispute arises as to the apportionment of amount or any part thereof or to whom the same or any part thereof is payable, the competent authority has to refer the same for its adjudication before the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

Section 3H (4), nowhere empowers the competent authority i.e. respondent No.1 to adjudicate upon the dispute of apportionment of its own and as such, the impugned order dated 31.07.2019 is held wholly beyond the competence of respondent No.1. Reliance in this regard can be placed upon the observations made by Division Bench of this Court to para 8 of ***Nirmal Singh’s case*** (supra), which is reproduced hereunder:-

“8. It is true that the Act is a special statute which has

clothed the Central Government with the power to acquire any land for a public purpose, which is required for building, maintenance, management or operation of a national highway or part thereof. But many provisions of the Act are akin to the provisions of the [Land Acquisition Act](#), 1894 (for brevity, 'the 1894 Act'). A perusal of [Sections 3A](#), [3C](#) and [3D](#) of the Act would show that they are similar to [Sections 4](#), [5A](#) and [6](#) of the 1894 Act respectively in their contents and intendment. Even [Section 3H\(3\)](#) and (4) of the Act are somewhat similar to [Sections 18](#) and [30](#) respectively of the 1894 Act. Likewise, further provisions like [Sections 3H](#) and [3G](#) of the Act are equivalent to [Sections 16](#) and [11](#) of the 1894 Act. Then it follows that the Competent Authority under the Act designated by respondent Nos. 1 and 2 would not be clothed with the power to adjudicate the claim of apportionment made by the parties in respect of the land for which notifications for acquisition have been issued under the Act. Under sub-section (3) of [Section 3H](#) of the Act, the Competent Authority may determine the persons who would be entitled to receive the amount payable to each of them where several persons make claim in respect of the amount deposited under sub-section (1) of [Section 3H](#) of the Act. This Section does not talk about any dispute between several claims, which in fact, has been specifically dealt with in sub-section (4) of [Section 3H](#) of the Act. Sub-section (4) of [Section 3H](#) of the Act opens with the words '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', then the Competent Authority nominated by the State Government like respondent No. 4 is under obligation 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. Therefore, we are of the view that under the garb of power to determine the persons who in the opinion of the Competent Authority would be entitled to receive the amount of compensation, which is in dispute, the Competent Authority could not have entered upon

adjudication of the dispute and a reference should have been made to the Court of competent jurisdiction. Once the aforesaid legal position is clear from the reading of the provisions itself, the consequence of determining the apportionment between the petitioner and the private respondents have to be left to the adjudication of the District Judge.”

10. In view of the discussion made hereinabove, respondent No.1 being not competent to adjudicate upon the issue of apportionment could not have opined on the issue of ownership of the property in question besides the disbursement of compensation under acquisition. Resultantly, the impugned order dated 31.07.2019 passed by respondent No.1 is hereby set aside with a direction to refer the dispute of apportionment, initiated at the instance of petitioners, for its adjudication before the Court of competent jurisdiction. The said exercise be concluded within a period of two months from today.

11. Pending application(s), if any, stand(s) disposed of.

03.10.2023

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No