

Before M.M. Kumar & Jitendra Chauhan, JJ.

NIRMAL SINGH,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

CWP No. 19838 of 2009

11th NOVEMBER, 2011

Constitution of India - Art. 226 - National Highway Act, 1956 -Ss. 3 (a), 3-H (4)- Land Acquisition Act, 1894 - Ss.4, 5A,6,11 & 16 - The Competent Authority-cum-SDM announced award fixing price of the acquired land - Respondents No. 5 to 7 demanded disbursement of compensation in their favour - The competent authority directed that the amount of compensation be paid - Challenge thereto - Competent Authority could not have entered upon adjudication of the dispute- competent authority is obliged to make a reference of the dispute to the District Judge under sub-section 4 of Section 3-H of the Act

Held, that under sub-section (3) of Section 3 H 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 3 H 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 3 H of the Act. Sub-section (4) of Section 3 H 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.

(Para 8)

None, for the petitioner.

K.G. Sharma, Advocate, for respondent Nos. 1 and 2.

Suvir Sehgal, Addl. AG, Punjab.

Kanwaljit Singh, Senior Advocate, with Idushi Gaur, Advocate, for respondent Nos. 5, 6 and 7.

M.M. KUMAR, J.

(1) The instant petition filed under Article 226 of the Constitution prays for quashing of order dated 11.11.2009 (P-4) passed by respondent No. 4 and a further prayer has also been made that the dispute regarding apportionment of the amount of compensation be referred to the Court of District Judge, Amritsar, in view of the mandatory provisions of Section 3H(4) of the National Highway Act, 1956 (for brevity, 'the Act'), pertaining to deposit and payment of amount of compensation in respect of the land acquired under the provisions of the Act.

(2) The pivotal question which arises for consideration in the instant petition is whether the Competent Authority constituted under Section 3(a) of the Act would be acting within its competence and jurisdiction by determining the dispute concerning possession and/or ownership of the acquired land. The issue further would be whether the power of the competent authority under sub-section (3) of Section 3-H of the Act extends to partition of the acquired land and disbursement of compensation in favour of one shareholder by issuing direction to the authority to adjust the area of the acquired land as and when partition is to take place. Another issue would be whether the Competent Authority is obliged to make a reference of the dispute to the District Judge under sub-section (4) of Section 3-H of the Act.

(3) Brief facts of the case are that on 25.8.2008 (P-1), the Union of India-respondent No. 1 issued a notification under Section 3A of the

Act for acquisition of land alongside NH-1 from KM 412 plus 380 to KM 431 plus 300 (Jalandhar-Amritsar Section) in District Amritsar in the State of Punjab, including village Budha Theh (Beas) in Tehsil Baba Bakala, District Amritsar (P-1). The land measuring 28 Kanals 3 Marlas was the subject matter of acquisition in the said village. Thereafter on 14.1.2009, another notification under Section 3D of the Act declaring to acquire land measuring 28 Kanals 3 Marlas as mentioned in the Schedule of the said notification (P-2). On 25.5.2009 (P-3), the Competent Authority-cum-Sub Divisional Magistrate, Baba Bakala-respondent No. 3 announced the award fixing the price of the acquired land at the rate of Rs. 2,90,90,909 per acre in respect of the land comprised in plots and at the rate of Rs.1,28,000 per acre in respect of un-irrigated land. With regard to disbursement of compensation, it was provided under para 7 as under:-

“(7) Disbursement of compensation under acquisition: Owners will be disbursed the compensation as per their share on latest jamabandi of their village. If any mutation is sanctioned during the process of acquisition same will be implemented. Any area under Mortgage, Mortgage money will be deducted from the owner’s compensation. If any dispute regarding the ownership of mutation comes up the compensation will be detained till the compromise between the parties of decision of the Competent Court take place.”

(4) The claim of the petitioner is that he was entitled to the compensation of plot measuring 1 Kanal 4 Marlas, comprised in Khasra No. 77/21 Min. (0-5) and 78/25 Min. (0-19). However, on 22.10.2009, respondent Nos. 5 to 7 submitted an application before the Land Acquisition Collector-cum-Sub Divisional Magistrate, Baba Bakala-respondent No. 4 claiming themselves to be the only owner in possession of the land comprising in Khasra No. 77//21, 78//25, 78//16, 78//17, situated at village Budhatheh (Beas), Tehsil Baba Bakala, District Amritsar. They demanded disbursement of the compensation in their favour. On 11.11.2009 (P-4), respondent No. 4 passed an order directing that the amount of compensation announced vide award dated 25.5.2009 be paid to respondent Nos. 5 to 7. It was further ordered that as and when partition of the joint Khata takes place

then the area be deducted from the share of respondent Nos. 5 to 7. The view of the Competent Authority-respondent No. 4 is discernible from the following para of the order dated 11.11.2009 (P-4), which reads thus:

“After the spot inspection, it is found that as per the revenue record, the acquired land comprising in Khasra No. 77//21 Min (0-5), 78//16 Min (0-19), 78//17 Min (1-6), 78//25 Min (0-19) is Mustarkha Malkan, in these Khasra Numbers Bawa Gursharan Singh son of Bawa Daljit Singh, Kanwarjit Singh son of Bawa Daljit Singh and Poonam widow Amarjit Singh got executed sale deeds and the sides of the purchased land are given in the sale deeds and accordingly the boundary wall is raised and tubewell is installed. Boundary wall has a gate. Meaning thereby that they are in possession of the acquired land. Shri Jai Pal Singh, P.C.s., Sub Divisional Magistrate, Baba Bakala has certified the possession in the award announced on 25.05.2000 and he has announced the award in the name of Bawa Gursharan Singh son of Bawa Daljit Singh, Kanwarjit Singh son of Bawa Daljit Singh and Poonam widow of Amarjit Singh regarding the construction made on Khasra No. 77//21 Min (0-5), 78//16 Min (0-19), 78//17 Min (1-6), 78//25 Min (0-19). The statement of Patwari Halqa, village Budhatheh, Shri Gurdev Singh were recorded at the spot. He has certified the possession of Bawa Gursharan Singh son of Bawa Daljit Singh, Kanwarjit Singh son of Bawa Daljit Singh and Poonam widow of Amarjit Singh on Khasra No. 77//21 Min (0-5), 78//16 Min (0-19), 78//17 Min (1-6), 78//25 Min (0-19).

Shri Nirmal Singh son of Narinder Singh son of Harnam Singh, Shri Suhawa Singh son of Chanda Singh resident of Budhatheh, Shri Narang Singh son of Surain Singh, resident of village Budhatheh submitted objection that the payment of the acquired land be made to them. On the representation of Shri Nirmal Singh, Shri Nirmal Singh, Shri Santokh Singh and Shri Bawa Gursharan Singh were again heard on 11.11.2009. Both the parties made submissions in their favour. Whereas there is joint account of Khasra numbers but Gursharan Singh got executed the sale deeds by mentioning sides and these sides tally with

the acquired land. Therefore, the acquired land is in possession of Bawa Gursharan Singh son of Bawa Daljit Singh, Kanwarjit Singh son of Bawa Daljit Singh and Poonam widow of Amarjit Singh whereas the land in possession of Nirmal Singh son of Narinder Singh son of Harnam Singh is on the second side of G.T. Road because Bawa Gursharan Singh son of Bawa Daljit Singh, Kanwarjit Singh son of Bawa Daljit Singh and Poonam widow of Amarjit Singh have possession as a right and they have raised boundary wall on these Khasra numbers. Therefore, Bawa Gursharan Singh son of Bawa Daljit Singh, Kanwarjit Singh son of Bawa Daljit Singh and Poonam widow of Amarjit Singh are the affected persons with the acquisition of land. Therefore, they are liable to be paid the compensation of the acquired land. Tehsildar, Baba Bakala is directed that as and when the division of land of joint account is done then the acquired land be deducted from the land in the share of Bawa Gursharan Singh son of Bawa Daljit Singh, Kanwarjit Singh son of Bawa Daljit Singh and Poonam widow of Amarjit Singh.

Therefore, the right and possession of Bawa Gursharan Singh son of Bawa Daljit Singh, Kanwarjit Singh son of Bawa Daljit Singh and Poonam widow of Amarjit Singh is proved on the land comprising in Khasra No. 77//21 Min (0-5), 78//16 Min (0-19), 78//17 Min (1-6), 78//25 Min (0-19) and the payment of compensation is made to the affected parties.”

(5) The grievance of the petitioner is that the impugned order dated 11.11.2009 has been passed by respondent No. 4 in his capacity as Competent Authority designated by respondent Nos. 1 and 2, under Section 3-H(4) of the Act, which in fact required him to make a reference of the dispute for decision to the Principal Civil Court of original jurisdiction i.e. District Judge, Amritsar. The petitioner has also submitted that in case of dispute the Competent Authority-respondent No. 4 could not have visited the spot to determine the possession and title of the parties which is only within the domain of the District Judge, Amritsar. The Competent Authority could also not issue any direction to the revenue authorities for deduction of the share belonging to respondent Nos. 5 to 7 at the time of partition proceedings. It amounts to adjudication, which is the sole domain of the District Judge.

(6) However, the stand taken by the opposite party is that the order has been passed under sub-section (3) of Section 3-H of the Act, which vests the Competent Authority like respondent No. 4 to determine the persons who were entitled to receive the amount payable to each of them in case several persons claim to be interested in the amount deposited under sub-section (1) of Section 3-H of the Act in order to determine which of the persons would be entitled.

(7) In order to resolve the controversy it would be first necessary to read Sections 3A, 3C, 3D and 3H(1) to (4) of the Act, which are reproduced as under:-

“3A. Power to acquire land, etc.-

- (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.
- (2) Every notification under sub-section (1) shall give a brief description of the land.
- (3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.”

“3C. Hearing of objections.-

- (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.
- (2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such

objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.- For the purposes of this subsection, “legal practitioner” has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

- (3) Any order made by the competent authority under sub-section (2) shall be final.”

“3D. Declaration of acquisition.-

- (1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under subsection (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.
- (2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.
- (3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1.) of section 3A is stayed by an order of a court shall be excluded.

- (4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.”

“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 subsection (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) and (6) xxx xxx xxx”

(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.

(9) It also deserves to be noticed that order dated 11.11.2009 (P-4), which is subject matter of challenge in the instant petition, has been partially given effect to, inasmuch as, the interests of the petitioner have been secured. Accordingly, on 3.3.2010 when the matter came up for consideration, this Court directed respondent Nos. 5 to 7 to furnish a bank guarantee equivalent to the amount of compensation disbursed to them, to the satisfaction of the learned District Judge, Amritsar. Since the controversy between the petitioner and respondent Nos. 5 to 7 is in respect of 1 Kanal and 4 Marlas of land only, therefore, on an application filed by respondent Nos. 5 to 7,

order dated 3.3.2010 was modified and they were required to furnish bank guarantee equivalent to the amount of compensation proportionate to 1 Kanal 4 Marlas of land, out of the total compensation disbursed to them, to the satisfaction of the learned District Judge, Amritsar, vide order dated 16.7.2010.

(10) In view of the above, the dispute in respect of Khasra Nos. 77//21 (0-5), 78//16 Min. (0-19), 17 Min. (1-6), 25 Min. (0-19), which are shown in the name of Nirmal Singh and others, who are stated to be the owner/interested persons, is referred to the learned District Judge, Amritsar, as it is a Principal Civil Court of original jurisdiction in terms of Section 3H(4) of the Act. The learned District Judge shall decide the question of apportionment of the amount of compensation and shall also determine the question as to who is entitled to receive the amount of compensation in whole or in part. The needful shall be done preferably within a period of six months from the date when the parties would appear before the learned District Judge by providing three opportunities to each side. The Registry is directed to send a copy of this judgment to the learned District Judge, Amritsar, who shall fix a date of appearance after issuing notices to all the parties.

(11) The writ petition stands disposed of in the above terms.

A.K. Jain

Before K. Kannan, J.

BALWINDER MASIH,—*Petitioners*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

CWP No. 21460 of 2011

18th November, 2011

Constitution of India - Art. 226 - Rajiv Gandhi Gramin LPG Vitrak Scheme - Allotment of LPG Dealership - Eligibility criteria in scheme - Applicant to be resident of town of advertised location - Dealership awarded to Respondent No. 6 resident of village: