

(1989) 01 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1650 of 1980

Balwant Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 24-01-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 115
Land Acquisition Act, 1894 — Section 18

Citation : (1990) 97 PLR 422

Hon'ble Judges : J.S. Sekhon, J

Bench : Single Bench

Advocate : Brij Mohan Lal, for the Appellant; Nipun Mittal, for the Respondent

Final Decision : Allowed

Judgement

Jai Singh Sekhon, J.—This civil revision is directed against the order dated 26-2-1980 of the learned District Judge, Ropar recalling his order/award dated 21-12-1979, on reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), on the ground of lack of jurisdiction as earlier award of the learned Additional District Judge, dated 3-3-1979, on the merits of the case has become final and reference was wrongly ordered to be restored by the learned District Judge vide his order dated 15-5-1979.

2. In brief the facts are that some land belonging to Balwant Singh petitioner was acquired by the State of Punjab for public purposes under the relevant provisions of the Act. The Land Acquisition Collector awarded some compensation of the acquired land. Being dissatisfied with the adequacy of the compensation of the acquired land, Balwant Singh sought a reference u/s 18 of the Act to the Court of District Judge, Ropar. This reference was assigned to the Court of Additional District Judge, Ropar then presided over by Shri Hira Lal Garg. On 3-3-1979, the petitioner or his counsel failed to turn up which resulted in affirming the award of the Land Acquisition Collector due to lack of evidence. The petitioner then filed an application on 27-3-1979 for restoration of the original award. Meanwhile the

Court of the Additional District Judge at Ropar was abolished and this application came on the file of the learned District Judge. On 15-5-1979, on the statement of the learned Government Pleader that he has no objection to the restoration of the reference such restoration was ordered on payment of Rs 100/- as costs. Thereafter, the learned District Judge, allowed the parties to contest the reference on merits and ultimately vide order dated 21-12-1979 the reference of the landlord was accepted and compensation on the acquired land was enhanced to Rs. 30,000/- per acre, by taking into consideration the copy of the judgment of the High Court, relating to similar land acquired vide the same Notification. Just after pronouncing the award on merits it came to the notice of the learned District Judge that he had no jurisdiction to do so as Mr. Garg, Additional District Judge had already disposed of the reference on merits vide his award dated 3-3-1979. Under these circumstances, notices were issued to both the parties in order to rectify the inadvertent mistake of accepting the application for restoration of the reference. The State of Punjab on 16-1-1980 also filed an application for reviewing the order dated 23-12-1979 of the learned District Judge, on the similar grounds. Ultimately, the learned District Judge, after hearing counsel for both the parties reviewed its own decision dated 15-5-1979 regarding the restoration of the original reference besides revoking its own order dated 21-12-1979, for enhancement of compensation, by holding that a reference u/s 18 of the Act cannot be equated with a suit as the petitioner had no dominus litus.

3. The learned counsel for the petitioner contended that under the provision of Order 47, Rule 1 of the Code of Civil Procedure, the power of the District Judge regarding the review of its own judgment was limited to the correction of mistake or error apparent on the face of the record. He further stressed that the order of restoration having been passed with the consent of both the parties, there was no question of revoking the same. Reliance has been placed on the decision of Privy Council in *Chhaju Ram v. Neki and Ors.* A. I. R. 1922 P. C 112 as well as of the Oudh Judicial Commission in *Ram Autar and Ors. v. Mahammad Abdul Hasan Khan* AIR 1916 Oudh 104 of Calcutta High Court in *Hazra Sardar and Others Vs. Kunja Behari Nag Choudhury*, of the Supreme Court in *Phuman and Ors. v. The State of Punjab* 1963 LL.R. (11) XVI, 442 besides of this High Court in *Jaswant Singh v. Balbir Singh* 1975 R L. R. 594 in support of the proposition that no such review was possible. Mr. Nipun Mittal, learned counsel for the State, on the other hand, maintained that a reference u/s 18 of the Act could not be equated to a plaint in the suit. He, however, frankly conceded that the learned District Judge had no power to review his order passed under wrong conception of law.

4. No doubt, the petitioner had filed a revision petition which is not maintainable in view of the provisions of Order 47, Rule 1 (i) of the Code providing a right of appeal to the person affected by granting an application of review, but all the same as this revision petition having been filed well within time, the period of limitation provided for filing an appeal, it shall be treated as an appeal, subject however, on making good the deficiency in the court fee, if any, within a period

of two. months of this order.

5. The provisions of Order 47, Rule 1, sub-rule (1) of the Code read as under:
Application for review of judgment-(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

The term for "any other sufficient reason" figuring in Rule 1 (c) in the above referred rule was interpreted by the Privy Council in Chhaju Ram's case (supra), after referring to the provisions of Section 8 of the Code of Civil Procedure, 1859, where the expression "requisite for the ends of justice" figured as well as to the provisions of Code of 1877, wherein this phrase was dropped, it was held that the construction on sufficient cause should be put in the restricted sense as it figures in the relevant Code of the Civil Procedure and it should not be assigned any wider meaning on the basis of analogous provisions figuring in the Code of 1859. It was further held that the other sufficient reason figuring in Rule 1 of Order 47 of 1908 Code should be construed strictly and that the words "any other sufficient reason" could only mean on grounds at least analogous to those specified immediately proceeding in the said rule.

6. The Judicial Commission Oudh in Ram Autar's case (supra), while interpreting corresponding provisions of Order 47, Rule 1 of the CPC 1908, observed, that a review is incompetent on the ground of objection to the jurisdiction of the civil court after decision on merits is taken up, although in that case, it was held that only revenue Court was competent to determine the class of tenancy.

7. Again, the Calcutta High Court in Hazra Sardar's case (supra) while interpreting the review powers of the civil Court held that a more mistake of law is not itself a sufficient mistake or error apparent on the face of the record so as to form a ground for review of the judgment.

8. A Single Bench of this Court in Jaswant Singh's case (supra) while interpreting scope of power of review of the civil Court held that a review of the earlier judgment on the ground that certain decisions of the High Court were not brought to the notice of the Court, is an error which cannot be described as an error apparent on the face of the record within the meaning of Order 47, Rule 1

of the Code, even if the earlier order was passed in oblivion of the law laid down by the High Court on the subject.

9. In view of the aboveresferred legal position, the impugned order of the learned Additional District Judge, Ropar is certainly not valid as he had no power to review its earlier order restoring the reference u/s 18 of the Act, even if it is taken that he had done so due to erroneous view of law. The matter does not rest here as the order of restoration of reference being passed by the learned District Judge, Ropar with the consent of the Government Pleader and thus, the State was estopped from seeking a review of such order.

10. The provisions of Section 28A of the Act inserted by Amending Act No. 68 of 1984 clearly show that the legislature intended that the compensation of the acquired land having similar situation potential acquired vide same Notification should be uniform by giving a right to a person who has sought a reference u/s 18 of the Act to approach the Land Acquisition Collector for re-determination of the amount of compensation on the basis of the award of the Court. In the present case also, after restoring the original reference the learned District Judge had awarded some compensation of the acquired land on the basis of the award of the High Court. Thus, setting aside its own award dated 21st December, 1979 given on merits by exercising its power of review under the provisions of Order 47, Rule 1 of the Code and restoring the dismissal of the reference by the Additional District Judge due to non-appearance of the petitioner or his counsel would certainly militate against the very intent of the Legislature for treating all the persons at par in the matter of awarding compensation of the similarly situated acquired land.

11. For the foregoing reasons, the impugned order of the District Judge is set aside by accepting this appeal and restoring the award dated 21st December, 1979 rendered by the District Judge. The parties are, however, left to bear their own costs in view of the peculiar circumstances of the case.