

(2012) 07 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2254 of 2011

Dilbhajan Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60(1)
Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 18, 19(8), 31(1)
Pensions Act, 1871 — Section 11
Provident Funds Act, 1925 — Section 2(a), 3, 4

Citation : AIR 2013 P&H 1 : (2012) 4 RCR(Civil) 633

Hon'ble Judges : G.S. Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : H.C. Arora, for the Appellant; Piyush Kant Jain, Additional Advocate General, Punjab, for the Respondent

Judgement

Ajay Kumar Mittal, J.—The petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution

of India for issuance of a writ of certiorari for quashing the order dated 11.5.2010 (Annexure P-1) passed by respondent No. 2 directing the Land

Acquisition Collector, Bathinda to deposit the entire amount of compensation payable to him for adjustment against the recovery due to

respondent No. 5 in an Original Application which is subject to the matter of execution before respondent No. 2. Further a prayer has been made

for issuance of a writ of prohibition restraining respondents No. 2 to 4 from attaching/withholding the amount of compensation which has become

due to be paid to the petitioner in view of judgment of this Court in RFA No. 2703/1994. Writ of mandamus has also been sought directing

respondents No. 2 to 4 to release the amount of compensation payable to the

petitioner. Briefly stated, the facts as narrated in the writ petition are that the land of the petitioner was acquired by the State of Punjab for establishment of Engineering College at Bathinda which was part of a land measuring 752 Bighas and 9 Biswas. Against the award of compensation by the State Government, the concerned landowners including the petitioner filed a reference u/s 18 of the Land Acquisition Act, 1894 (in short "the Act") before the District Judge, Bathinda and thereafter regular first appeal before this Court. The said appeal was disposed of by this Court on 13.3.2008 on the basis of order passed in RFA No. 1953 of 1994 by enhancing the amount of compensation from Rs. 1,20,000/- per acre to Rs. 1,50,000/-. Before the said amount could be released to the petitioner by respondent No. 3, on an application moved by respondent No. 5 Bank in execution in recovery case No. 157/2006, respondent No. 2 vide order dated 11.5.2010 (Annexure P-1) ordered for attaching the entire compensation amount payable to the petitioner under Rule 27 of the 2nd Schedule of the Income Tax Act, 1961. It was further directed that the said amount be deposited with respondent No. 2 for realization against the recovery due to respondent No. 5. Respondent No. 3 was directed to report compliance of the said order. In pursuance thereto, respondent No. 3 issued a notice dated 19.5.2010 to the petitioner for 26.5.2010. According to the petitioner, the compensation payable to him for the land under reference was not liable to be attached in view of Clause (a) of Section 52A of the Act. The petitioner made a representation before respondent No. 3 to release the payment of enhanced compensation to him by ignoring the order dated 11.5.2010 passed by respondent No. 2. On refusal by respondent No. 4 to release the amount of compensation to the petitioner, the petitioner filed an objection petition dated 5.6.2010 before respondent No. 2 for withdrawal of the order dated 11.5.2010. Reply to the objection petition was filed by respondent No. 5. Along with the reply, respondent No. 5 attached a judgment dated 4.7.1968 (Annexure P-6) passed by this Court. According to the petitioner, the judgment (Annexure P-6) does not appear to lay down correct position of law. Hence, the present petition.

2. We have heard learned counsel for the parties.

3. Learned counsel for the petitioner submitted that by the Land Acquisition (East

Punjab Amendment) Act, 1948, i.e. East Punjab Act No. XV of

1948 read with Section 88 of the Act No. 31 of 1966, Section 52A has been inserted in the Land Acquisition Act, 1894. The attachment order

issued by the Collector before the compensation was paid to the petitioner was legally unjustified in view of Clause (a) thereof. Support was

sought to be drawn from the judgment of the Hon''ble Apex Court in Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others, . Reliance

was placed on paras 10 to 12 of the said judgment which read thus:-

10. We may formulate what has been indicated the actual points urged before us by Shri Sanghi and vigorously controverted by Shri Rohtagi. (1)

Is it permissible in law for amounts representing provident fund contributions and pensionary benefits to be attached, having due regard to Sections

3 and 4 of the Provident Funds Act, Section 11 of the Pensions Act and Section 60(1), provisos (g) and (k) of C.P.C.? (2) Is the Union of India

entitled to move the Court and request it to investigate the question that the whole or part of the sum in its hands on account of the judgment-

debtor as provident fund, compulsory deposits and pensionary benefits and, therefore, not liable to be attached, or is it out of bounds for a third

party to the suit, like the Union of India, even if the step be taken pro bono publico by a relevant public authority, to invoke the jurisdiction of the

Court in this behalf? (3) Is the Rajya Sabha Secretariat staff so totally separated from the Union of India that the latter cannot urge, in these

proceedings, the claims belonging to employees of the said Secretariat in the civil court even if the attachment of the sums involved is contrary to

law ? We are inclined to hold, without hesitation that on all the points the appellant is bound to succeed. A bare reading of Sections 3 and 4 of the

Provident Funds Act, 1925, read with Section 2(a) of that Act, will convince anyone that attachment of amounts bearing their description are

prohibited. It will be a gross violation of legal mandates involving public interest if, in the teeth of such injunction, an attachment should still be

ordered by a court.

11. The finer distinction sought to be made by Shri Rohatgi that because the appellant has already retired, therefore, the provident fund and allied

amounts have already fallen due and have ceased to possess the complexion of sums "by way of provident fund under Sections 3 and 4", is

fallacious. On first principles and on precedent, we are clear in our minds that these sums, if they are of the character set up by the Union of India, are beyond the reach of the court's power to attach. Section 2(a) of the Provident Funds Act has also to be read in this connection to remove possible doubts because this definitional clause is of wide amplitude. Moreover, Section 60(1), provisos (g) and (k), leave no doubt on the point of non-attachability. The matter is so plain that discussion is uncalled for.

12. We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought. We take a contrary view which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possibly be entertained on this question, the decision in *Union of India v. Radha Kissen Agarwala & Anr*, erases them. Indeed our case is an *a fortiori* one, on the facts. A bare reading of *Radha Kissen* makes the proposition foolproof that so long as the amounts are Provident Fund dues then, till they are actually paid to the government servant who is entitled to it on retirement or otherwise the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and over-rule the contention.

4. It was further submitted that the Single Bench of this Court in *Mukhtiar Vs. Sardarni Virpal Kaur and Others*, was not right in interpreting the aforesaid provision to hold that Clause (a) was applicable only in cases where the land was not liable for attachment or sale in execution of a decree or order of any Court.

5. Learned State counsel on the other hand besides drawing strength from the judgment of this Court in *Mukhtiar's* case (*supra*) has submitted that the action of respondents No. 2 to 4 was legally permissible and the attachment of compensation has rightly been made.

6. We have heard learned counsel for the parties. It would be advantageous to reproduce Section 52A of the Act which was inserted in the Act vide East Punjab Act No. XV of 1948 read with Section 88 of Act No. 31 of 1966:-

52A. Protection of compensation.- No compensation awarded or awardable under this Act:-

(a) Before it is actually paid to the person entitled to receive the same; or

(b) Before or after it is actually paid to the person entitled to receive the same in respect of any land which is not liable under the law for the time

being in force to attachment or sale in execution of a decree or order of any court, shall be liable to seizure, attachment or sequestration by process

of any Court, at the instance of a creditor, for any demand against the person entitled to compensation, or in satisfaction of a decree or order of

any Court, and, notwithstanding anything to the contrary in any law for the time being in force, neither the official assignee nor any receiver

appointed under any law shall be entitled to proceed against or to have any claim on any such compensation.

7. After giving our thoughtful consideration to the respective submissions of learned counsel for the parties, we find that respondent No. 2 was not

justified in directing the Land Acquisition Collector to deposit the entire amount of compensation against the recovery due to respondent No. 5 as

the same in view of Section 52A of the Act could not be attached.

8. Section 52A of the Act was inserted by Land Acquisition (East Punjab Amendment) Act, 1948, i.e. Act No. XV of 1948 read with Section 88

of Act No. 31 of 1966. The objects and reason noted at the time of inserting the aforesaid provision reads thus:-

Statement of Objects and Reasons.- u/s 31(1) of the Land Acquisition Act, 1894, the Collector is bound to tender payment of compensation

awarded by him for land acquired for a public purpose to the persons interested entitled thereto according to the award, and to pay it to them,

unless prevented by one or more of contingencies mentioned in sub- section (2), which does not include the contingency of an order by a civil

court; but cases have occurred in which the money awarded has been attached by subordinate civil courts for the satisfaction of decrees. Such

attachments involve Government in some avoidable litigation.

It is unfair that whereas the estate is protected from attachment, the price of that estate, when it is compulsorily acquired for a public purpose,

should have no such protection. This Bill is intended to exempt the compensation awarded under the Land Acquisition Act, from attachment. (Vide

Punjab Government Gazette Extraordinary, dated the 6th March, 1948, Page 179).

9. A plain reading of the objects and reasons spells out the purpose with which it was intended to be inserted. The wrong which was sought to be

remedied was to set at right by clearly specifying that the intention of the Legislature for enactment of this provision was to exempt the compensation awarded under the Act from attachment.

10. Clause (a) of Section 52A of the Act provides that no compensation which is awarded or awardable, before it is actually paid to the person

entitled to receive the same shall be liable to seizure, attachment or sequestration by process of any Court. Clause (b) of Section 52A governs

cases in respect of any land which is not liable under the law for the time being in force to attachment or sale in execution of a decree or order of

any court. The expression "in respect of any land which is not liable under the law for the time being to attachment or sale in execution of a decree

or order of any Court" apply only to clause (b) as it is preceded by the words "before or after it is actually paid to the person". In case it governs

both the clauses, i.e. clause (a) and clause (b), then clause (a) would be rendered otiose. As noticed earlier, clause (a) refers to an eventuality

before the compensation awarded or awardable is actually paid whereas clause (b) covers cases before or after making of payment in respect of

the land which is exempted from attachment. Words incorporated by the Legislature have to be interpreted in such a manner and assigned proper

meaning so as not to have any surplusage in the statute as held by the Constitution Bench of the Hon^{ble} Supreme Court in Aswini Kumar Ghosh

and Another Vs. Arabinda Bose and Another, wherein it has been laid down:-

It is not a sound principle of construction to brush aside words in a statute as being in-apposite surplusage, if they can have appropriate application

in circumstances conceivably within the contemplation of the statute.

11. Recently this has been followed in Chief Information Commr. and Another Vs. State of Manipur and Another, with the following

observations:-

This Court accepts the argument of the appellant that any other construction would render the provision of Section 19(8) of the Act totally

redundant. It is one of the well known canons of interpretation that no statute

should be interpreted in such a manner as to render a part of it redundant or surplusage.

12. The interpretation to the contrary placed by learned Single Judge in Mukhtiar's case (*supra*), with due respect, does not lay down correct proposition and we are unable to subscribe to the same. Accordingly, the said judgment is hereby overruled. The writ petition is accordingly allowed and respondents No. 2 to 4 are restrained from attaching the amount of compensation payable to the petitioner and shall release the same to him in accordance with law.