
(2012) 05 SHI CK 0033
In the High Court Of Himachal Pradesh
Case No : Criminal No. 83 of 2011

Dinesh Kumar and Others

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 146
Land Acquisition Act, 1894 — Section 18, 28A

Citation : AIR 2012 HP 68

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Advocate : Dibender Ghosh, for the Appellant; Anil Jaswal, Dy. A.G. and Ramesh Thakur, AAG., for the Respondent

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The challenge herein in this civil revision petition u/s 115 of the Code of Civil Procedure, 1908 (in short "CPC") is against the order dated 05.03.2011, passed by the learned District Judge (Forest) Shimla, dismissing an application u/s 146 CPC filed by the petitioner herein with a prayer for "grant of compensation to the extent of the shares of applicants by enforcing the award passed by Ld. ADJ, Shimla in Land Reference No. 9-S/4 of 2005, decided on 5.11.2007. Shorn of details the facts necessary for disposal of the present petition are that land measuring 1 bigha 6 biswa belonging to the predecessor-in-interest of the petitioners, late Shri Bija Ram, to the extent of 1/3 share along with other co-owners, namely, Prem Kumar, Vinod Kumar, Krishan Kumar, Swadesh Kumar and Hemant Kumar to the extent of 1/3 share and Om Parkash and Banshi Dhar to the extent of 1/3 share, was acquired by respondent No. 1-State. The acquisition was for a public purpose, namely, "Construction of Lift Water Supply Scheme Jadhyal, for Irrigation & Public Health Department in village Jadhyal, Tehsil and District, Shimla, H.P., land measuring 1-6 Bighas". After observing all the codal formalities under the Land Acquisition Act, 1894 (in short "the Act") respondent No. 2-Land Acquisition Collector announced his

award dated 31.03.2003, Annexure P-1, granting compensation for the acquired land ranging from Rs. 36,000/- to Rs. 9,00,000/- per bigha on the basis of classification of the land. Being aggrieved, whereas the aforesaid co-sharers, who were owners of the acquired land to the extent of 2/3 share, sought reference to the court u/s 18 of the Act, the predecessor-in-interest of the petitioners, late Shri Bija Ram, did not take any step for referring the matter to the court.

2. The reference on behalf of the aforesaid co-sharers was adjudicated upon by the learned Additional District Judge, Shimla, H.P., who passed award dated 05.11.2007, Annexure P-2, and granted enhanced compensation along with interest and other benefits under the Act in their favour.

3. Against the above backdrop, the petitioners moved the aforesaid application u/s 146 CPC for grant of enhanced compensation along with interest etc. in terms of the aforesaid award dated 05.11.2007 on the ground that they being successors-in-interest of a co-sharer in an acquired land, namely, late Shri Bija Ram, were also entitled for enhanced compensation along with interest and other benefits under the Act at par with other co-sharers.

4. The prayer for enhanced compensation and interest etc. has been declined by the learned Reference Court mainly on the ground that as the petitioners did not come forward for re-determination of the amount of compensation on the basis of the award of the court dated 05.11.2007, Annexure P-2. u/s 28A of the Act, they were precluded from laying claim for enhanced compensation and interest etc. u/s 146 CPC.

5. I have heard the Learned Counsel for the petitioners and the learned Deputy Advocate General with the learned Assistant Advocate General for the respondents and gone through the records.

6. I have no hesitation to say at the very outset that the learned Reference Court has not addressed the issue involved in the matter in the right perspective even despite the fact that the law laid down by the Hon'ble Supreme Court in A. Viswanatha Pillai and others Vs. Special Tahsildar for Land Acquisition No. IV and others, and The Jalandhar Improvement Trust Vs. The State of Punjab and Others, was brought to its notice on behalf of the petitioners, who relied upon the same in support of their claim.

7. In the case of A. Viswanatha Pillai & others, supra, the Hon'ble Supreme Court has held as under vide the relevant portion of para 2 of the report:

2.....The same ratio would apply to the facts in this case as well. When one of the co-owners or coparceners made a statement in his reference application that himself and his brothers are dissatisfied with the award made by the Collector and that they are entitled to higher compensation, it would be clear that he was making a request, though not expressly stated so but by necessary implication that he was acting on his behalf and on behalf of his other co-owners or

coparceners and was seeking a reference on behalf of other co-owners as well. What was acquired was their totality of right, title and interest in the acquired property and when the reference was made in respect thereof u/s 18 they are equally entitled to receive compensation pro rata as per their shares. The courts below committed manifest error in refusing to pass an award and payment thereof to the appellants merely on the ground that there was no mention in this regard in the reference application or two of them sought reference in respect of two awards and the last one made no attempt in their behalf. The claimants are entitled to payment of the enhanced award by the civil court pro rata of their 1/4 share each with 15 per cent solatium and 4 per cent interest as awarded by the civil court. The appeals are accordingly allowed with costs of this Court.

8. Thus, it is more than clear that even a co-sharer who has not sought reference to the court is entitled for enhanced compensation pro rata in accordance with his share in the acquired land.

9. In *Jalandhar Improvement Trust v. State of Punjab and others* (supra) the Hon"ble Apex Court while placing reliance upon *A. Viswanatha Pillai & others* (supra) has laid down as under vide para 5:

5. Having regard to the view we propose to take and the manner of disposal intended to be given, it is unnecessary for us to even advert to the relevance or applicability of Section 28A of the Act to the case of the nature before us. The 4th respondent indisputably is a co-owner along with her children who were added as petitioners 2 to 5 to the award dated 5-2-1986, in which case, even on the first principles of law one co-owner is entitled to have the benefit of the enhanced compensation given in respect of the other co-owners in a reference made at his instance in respect of the land acquired, which belonged to all of them, jointly. So far as the fact that in this case the 4th respondent's application for reference u/s 18 was rejected by the Tribunal ultimately on the ground that the reference was made on a belated application, does not make any difference and, is no reason, in our view, to differentiate the claims of such co-owners whose claims came to be really sustained and that of the 4th respondent, for differential treatment. We are fortified to some extent in the view expressed by this Court in the decision reported in (AIR 1991 SCP. 1966), *A. Vishwanath Pillai & Ors. v. Special Tehsildar for land Acquisition*.

10. Thus, it is manifest that the claim for enhanced compensation by a co-owner at par with other co-owners in whose favour an award has been passed is based on his own right as a co-owner irrespective of any claim for re-determination of the amount of compensation on the basis of award of the court u/s 28A of the Act.

11. In view of the above, the petition is allowed. Consequently, the impugned order dated 05.11.2007 is set aside and the petitioners are held entitled for enhanced pro rata compensation along with interest and other benefits such as solatium etc. under the Act in accordance with their 1/3rd share in the acquired

land in terms of the aforesaid award dated 05.11.2007, passed by the learned Additional District Judge, Shimla, H.P., in Land Reference No. 9-S/4 of 2005, Annexure P-2. The petition stands disposed of in the above terms.