

(2010) 09 P&H CK 0115

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 4152-C of 2010 in/and Regular Second Appeal No. 697 of 1991

Fateh (dead) through his Legal Representatives

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), 11, 151, 6
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4

Citation : (2011) 161 PLR 717

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—This appeal was admitted on 19.07.1991.

2. The Plaintiff filed a suit for declaration to challenge acquisition proceedings and the award passed under the Land Acquisition Act, 1894 [for short "the Act"] as illegal, null and void alleging that his land measuring 8 Kanals 2 Marias comprising in Khewat No. 140, Khata No. 215, Rectangle No. 49, Killa No. 6min and 7 min, situated in village Sandeel was acquired for the public purpose, namely, for allotment of residential plots to landless/homeless Harijans, members of backward classes and economically weaker persons in the village. The Land Acquisition Collector [for short "the Collector"] gave his award u/s 11 of the Act on 27.03.1984. The Plaintiff challenged the acquisition proceedings on the ground that no notice was given to him of the notifications under Sections 4 and 6 of the Act, therefore, the acquisition proceedings are illegal. The suit has been dismissed by the Courts below.

3. During the pendency of the present appeal, CM No. 4152-C of 2010 is filed under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure, 1908 [for short "Code of Civil Procedure"] by the persons who have been allotted 3 Marias plot each out of the acquired land, which includes the land of the

Appellant, claiming themselves to be necessary and proper parties as they would be ultimately affected by the result of the appeal. It is alleged in the application that Civil Court does not have the jurisdiction to decide the matter in controversy. Notice in the application was issued.

4. On the concurrence of learned Counsel for the parties, namely, the Appellant, Respondents and the Applicants in the CM No. 4152-C of 2010, the main appeal itself, which though has not been listed for regular hearing, is taken up for hearing as counsel for the Appellant has submitted that the suit is maintainable and the argument raised by learned Counsel for the Applicants is patently erroneous. Hence, the question arises for consideration in the appeal by itself is as to "whether the acquisition proceedings initiated under the Land Acquisition Act, 1894 and the award of the Land Acquisition Collector could be challenged by way of a civil suit."

5. In order to support his contention, learned Counsel for the Applicants has relied upon two judgments of the Supreme Court and two Single Bench judgments of the other High Court, namely, State of Bihar v. Dhirendra Kumar and Ors. 1995 (3) R.R.R. 539 (S.C.), Ganpatibai and Another Vs. State of M.P. and Others, , Hari Prasanna Acharjee v. State of Tripura and Anr. 2003(1) All Ind.L.A.C.C. 556 (Gauhati High Court) and The State of Tamil Nadu and Anr. v. Rajamanickam 2001 (1) L.A.C.C. 146 (Madras High Court).

6. On the other hand, learned Counsel for the Appellants has submitted that acquisition of the land without notice is a civil wrong for which only the Civil Court has got jurisdiction to challenge the validity of the notification.

7. I have heard learned Counsel for the parties and perused the record with their able assistance.

8. The Supreme Court in the case of State of Bihar v. Dhirendra Kumar and Ors. (supra) had observed that the Act is a complete Code in itself and is meant to serve public purpose and by necessary implication the power of the Civil Court to take cognizance of the case stands excluded and as such Civil Court has no jurisdiction to go into the question of validity or legality of notification u/s 4 or declaration u/s 6 of the Act except by the High Court in exercise of its power under Article 226 of the Constitution of India. In the case of Ganpatibai and Anr. v. State of M.P. and Ors. (supra), similar view has been expressed by the Supreme Court while relying upon the decision in the case of State of Bihar v. Dhirendra Kumar and Ors. (supra) and the judgment has been then followed by the other High Courts. Thus, it is well settled now that the validity of notification issued u/s 4 of the Act and all the proceedings arising therefrom cannot be challenged by way of a Civil Suit. The only remedy is to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India.

9. In view of the aforesaid discussion, besides allowing CM No. 4152-C of 2010 for impleading the Applicants in the array of Respondents, I do not find any merit in the present appeal and as such, the same is hereby dismissed.

No costs.