
(2006) 08 P&H CK 0295
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1659 of 2005

Furkan Ali

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Citation : (2007) 2 LLR 335 : (2007) 1 PLR 474 : (2006) 4 RCR(Civil) 641

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. Ashok Khubar, Advocate.For the Respondent Nos. 1 and 2 : Mr. Jitender Chauhan, Addl. A.G., Haryana., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J.—The petitioner herein filed an execution on the ground that the land measuring 42 kanals situated in the revenue estate of village Garhi Gujran was acquired by the judgment debtors by notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) on 19th of April, 2005 and thereafter award No. 15 (Exhibit P11) was passed on 17.4.1995.

2. The case of the petitioner was that the land by way of award No. 15 was acquired from Khewat Nos. 4/35, 4/30 and 11/48 in which the present petitioner along with others was also a cosharer. The other cosharers of the land had filed objections under Section 18 of the Act and the case was referred to the Court of Shri V.S. Malik, the then Additional District Judge, Jagadhari for adjudication and the same was decided on 27.01.1998 vide consolidated judgment in LAC No. 133 of 1996 titled as "Man Singh v. State of Haryana etc.", by virtue of which the rate of acquired land was enhanced to Rs. 2,80,000/ per acre for whole of the acquired land. In addition thereto, statutory benefits under Sections 23(1A) and 28 of the Act were also provided to the land holders. It was claimed by the petitioner that he was also entitled to the same benefits.

3. The said claim of the petitioner was contested by the respondent judgment debtors on the plea that the petitioner was not a decree holder. Therefore he was not entitled to file the present execution application. It was pleaded that the as petitioner had not made any effort to become a party to

the reference, he was not entitled to file the present execution application. On merit, the case set up by the respondent judgment debtors was that no reference was filed by the application petitioner, nor he was a party in the LAC No. 138 of 1996 and the petitioners in the said reference had also not made any mention whether the present petitioner was aggrieved by the award. Therefore, there was no occasion to file the present application.

4. The learned executing (Court) has dismissed the application by holding that the petitioners have filed objections against award No. 15A which were dismissed. It was further held that the petitioners were not entitled to claim the benefit as they had failed to explain as to why they did not prefer the objections/reference under Section 18 of the Act against award No. 15. Accordingly, by holding that once the objections against award No. 15A were dismissed and the petitioners have failed to avail the remedy under Section 28 of the Act, they were not entitled to maintain the present execution application.

5. Learned counsel for the petitioner contended that the impugned order cannot be sustained in view of the judgment of this Court reported in Patiala Improvement Trust, Patiala v. Amar Singh and others, 2005(2) RCR(Civil) 332 : 2005(2) PLR 150, wherein this Court was pleased to hold as under :

"After hearing the learned counsel for the parties I am of the considered view that the reliance placed by the learned executing Court on the judgment of the Supreme Court in the case of A. Vishwanatha Pilai (supra) is meritorious. A specific question posed in para 2 in the aforementioned case is whether the other coowners who did not expressly seek reference are entitled to enhanced compensation pro rata as per their share on the basis of decision made in favour another coowner. The answer given to the aforementioned question is based on the principle that all the co-sharers are in possession and owner of every part of the land. The view of the Supreme Court becomes explicit from the last para of the judgment which reads as under :

"When one of the coowners 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 coowners or coparceners and was seeking a reference on behalf of other coowners 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 under Section 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 to 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 aforementioned view of the Supreme Court squarely answers the controversy raised in this petition in favour of the claimantrespondent because it is admitted position that the claimantrespondent is the co sharer/coowner of the acquired land to the extent of 1/7th whereas his children were entitled to 6/7th share and have got the enhanced compensation in pursuance to the order of the Tribunal dated 22.9.1986."

Therefore, in view of the law laid down by this Court referred to above, this revision petition is allowed and the impugned order is set aside and the petitioner is entitled to maintain the execution application on the basis of the award passed in favour of the other cosharers.