

(2018) 09 SHI CK 0030
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 194 of 2018

Lesru Ram (deceased) Through LR's Kalu Devi And Others	APPELLANT
Vs	
Collector Land Acquisition NHPC And Another	RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 115, 146, Order 21 Rule 11(2)
Land Acquisition Act, 1894 — Section 18, 28A

Citation : (2019) AIRCC 58 : (2018) LatestHLJ 1115 (HP)

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Sunil Mohan Goel, S.C. Sharma, Dinesh Thakur, Amit Kumar Dhumal

Final Decision : Disposed Off

Judgement

Sandeep Sharma, J.

1. Being aggrieved and dissatisfied with order dated 16.5.2018, passed by learned Additional District Judge, Kullu, Himachal Pradesh in Execution

Petition No. 57/2017 titled Lesru Ram since deceased through Legal Heirs (a) kalu Devi etc. vs. Collector Land Acquisition etc., whereby the learned

Executing Court has allowed the objections having been filed by the respondent No.1 (JD No.1 before the learned executing Court) consequently

dismissing the Execution Petition filed by the petitioners/Award Holders, petitioners have approached this Court by way of instant Revision Petition

under Section 115 of the Code of Civil Procedure, praying therein for setting aside the impugned order dated 16.5.2018.

2. Facts as emerge from the record are that the petitioners filed an Execution Petition before the learned Court below, seeking therein directions to the

respondents to pay them enhanced compensation with respect to land.

3. JD No.1, while refuting the claim set up in the Execution Petition, filed objections averring therein that the petition having been filed by the Award Holders, seeking therein enhancement of compensation qua the estate of Chet Ram is not maintainable. Judgment Debtor No.1 claimed before the learned Executing Court that Chet Ram had not filed any reference petition under Section 18 of the Land Acquisition Act (hereinafter, referred to as 'Act') nor filed an application under Section 28A of the Act and as such, after passing of the Award, present application for enhancement of amount of compensation is not maintainable. Judgment Debtor No. 1 also claimed that Chet Ram or his legal heirs could not seek enhancement of compensation qua his share on the basis of reference made by other co-owner by filing execution petition under Order XXI Rule 11(2) of the Code of Civil Procedure.

4. I have heard the learned counsel for the parties and gone through the record carefully.

5. Having heard the learned counsel for the parties and carefully perused the material available on record, this court finds that there is no dispute with regard to joint ownership, if any, of Chet Ram as well as co-sharers, who have already received amount on account of enhancement made by learned Additional District Judge vide award in Reference Petition No. 170 of 2007.

6. Mr. Sunil Mohan Goel, learned counsel representing Award Holders vehemently argued that the Award holders are/were well within their right to approach the learned Executing Court by way of application under Section 146 of the Code of Civil Procedure, seeking enhancement of compensation on the basis of award passed by learned Additional District Judge in the reference petition filed by other co-owners qua the same land.

7. Mr. C.N. Singh, learned counsel representing Judgment Debtor, on the request of this Court, has put in appearance on behalf of respondent No.1.

Mr. C.N. Singh, learned counsel representing the respondent No.1, was unable to point out any document available on record suggestive of the fact that order dated 5.4.2016 passed by learned Additional District Judge, Kullu, HP, in GW Act No. 01/2015 titled Smt. Shiv Dassi vs. G.P. was even put to challenge by any person, who claims himself/herself to be the legal heir of Chet Ram. It is not in dispute that vide order dated 5.4.2016, learned Additional District Judge, Kullu, appointed Smt. Shiv Dassi, wife of late Fateh

Ram, as Guardian/Manager qua movable and immovable property of her son i.e. Chet Ram, and categorically held that she being Manager of the property of her son, Chet Ram, is empowered to apply for transfer or release of any amount deposited in any court or with other authorities for the acquisition of land of Chet Ram and transfer same in the bank account of Chet Ram. It is also not in dispute that aforesaid order has attained finality as none of the parties including respondents laid challenge, if any, to the same.

8. It also emerges from the record that Shiv Dassi being legal guardian of lunatic Chet Ram, had filed a reference petition before appropriate court of law, which ultimately came to be decided on 5.6.2010. Shiv Dassi being guardian of Chet Ram also filed an RFA before this Court, which was allowed vide judgment dated 22.10.2016.

9. The question, whether a co-owner can seek enhancement of compensation qua the acquisition of land in Execution proceedings, without having filed Reference Petition under Section 18 of the Act, stands duly answered by this Court in *Dinesh Kumar & Ors. v. State of Himachal Pradesh & Anr.* AIR 2012 HP 68, wherein it has been specifically held that co-owner cannot be denied the enhanced amount of compensation on the basis of award under Section 28A of the Act, even if he/she had not filed claim petition before the court. It would be profitable to extract para Nos. 5 to 9 of the aforesaid judgment here-in-below.

5. 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, under Section 28-A of the Act, they were precluded from laying claim for enhanced compensation and interest etc. under Section 146 CPC.

6. 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.

7. 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 Honâ??ble Supreme Court in A. Viswanatha Pillai & others v. The Special Tahsildar

for Land Acquisition No. IV and others .(1991) 4 Supreme Court Cases 17:(AIR 1991 SC 1966) and Jalandhar Improvement Trust vs. State of

Punjab and others. AIR 2003 Supreme Court 620, was brought to its notice on behalf of the petitioners who relief upon the same in support of their claim.

8. In the case of A. Viswanatha Pillai & others, supra, the Honâ??ble Supreme Court has held as under vide the relevant portion of para 2 of the

report:

â??2â?|â?|â?|. 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 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 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 $\frac{1}{4}$ 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.â??

9. 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.â??

10. Reliance is also placed on Judgment passed by the Honâ??ble Apex Court in V. Viswanatha Pillai and others v. Special Tahsildar for Land

Acquisition No. IV and others AIR 1991 SC 1966, wherein it has been held as

under:-

2. The sole question for decision is whether in a reference sought for by one of the co-owners whether the other co-owners who did not

expressly seek reference, are entitled to enhanced compensation pro-rata as per their shares. It is not in dispute that under the partition deed, the four

brothers as coparceners kept in common the acquired property and Venkatachalam was in management thereof and each are entitled to 1/4 share in

the ancient Anicut and the irrigation system. It is also undisputed that total enhanced compensation is Rs.52,009.40 p. Therein all the four brothers

including the appellant are entitled to 1/4 share each. In the reference application made by the Venkatachalam indisputably he mentioned that the

acquired property belonged to him and his other brothers and the compensation awarded by the Land Acquisition Officer was inadequate and very

low. It was also stated that they should get an enhanced amount at the figure specified in the reference application. Undoubtedly he stated therein that

he is entitled to 1/4 share. What he stated thereby was that of his entitlement of 1/4 share of the total enhanced compensation and obviously, after the

reference on par with his three brothers, he is entitled to receive compensation at 1/4 share. The Courts below disallowed the payment to the

appellants on the ground that there is no mention in the claim petition of the partition deed; that they are the co-owners and that there is no averment

that the Venkatachalam was seeking reference under section 18 on his behalf and on behalf of his other three brothers.

As regards the first two grounds are concerned they are palpably incorrect. It is seen that an express averment was made in the objections filed

pursuant to notice under section 9(3) and 10 and also in his reference application under section 18 of the Act, that there was prior partition and each of

the brothers are entitled to 1/4th share and that they are dissatisfied with the award of the Collector. Undoubtedly there is no express averment in the

reference application under section 18 that he is seeking a reference on his behalf and on behalf of his three brothers. It is contended by the counsel

for the State that the pleadings are to be strictly construed and that as the reference was sought for only by Venkatachalam of all the six awards the

other three brothers are not entitled to any share in the enhanced compensation. In support thereof it is also further contended that Viswanathan and

Pasupathy had only asked for reference in respect of two awards and Sabhapathy Pillai made no request for reference against any of the six awards

made by the Collector. It is true that Viswanathan and Pasupathy made such request in respect of two awards and Sabhapathy did not make any

request for reference against any of the awards. But what would be the consequence in law is the question. It is surprising that the State having

acquired the property of a citizen would Teke technical objections regarding the entitlement of the claim. The State certainly is right and entitled to

resist claim for enhancement and lead evidence in rebuttal to prove the prevailing price as on the date of notification and ask the court to determine

the correct market value of the lands acquired compulsorily under the Act. But as regards the persons entitled to receive compensation are concerned

it has no role to play. It is for the claimants inter se to lay the claim for compensation and the court would examine and award the compensation to the

rightful person.

As seen in the objections pursuant to the notice under section 9(3) and 10, Venkatchalam made necessary averments that himself and his brothers had

1/4 share in the Anicut and irrigation system pursuant to the partition deed referred to therein. In his reference application under section 18 also he

reiterated the same and stated that the amount awarded by the Collector was inadequate and that they were dissatisfied with it and that they are

entitled to more. It is settled law that one of the co-owners can file a suit and recover the property against strangers and the decree would enure to all

the co-owners. It is equally settled law that no co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other

hand he has right, title and interest in every part and parcel of the joint property or coparcenery under Hindu Law by all the coparceners. In *Kanta*

Goel v.B.P. Pathak & Ors., [1977] 3 S.C.R. 412, this Court upheld an application by one of the co-owners for eviction of a tenant for personal

occupation of the co-owners as being maintainable- The same view was reiterated in *Sri Ram Pasricha v. Jagannath & Ors.*, [1977]1 S.C.R. 395 and

Pal Singh v. Sunder Singh (dead) by Lrs. & Ors., [1989] 1 S.C.R. 67. A co-owner is as much an owner of the entire property as a sole owner of the

property. It is not correct to say that a co-owner's property was not its own. He owns several parts of the composite property along- with others and it

cannot be said that he is only a part owner or a fractional owner in the property. That position will undergo a change only when partition takes place and division was effected by metes and bounds.

Therefore, a co-owner of the property is an owner of the property acquired but 'entitled to receive compensation pro-rata. The State would plead no

waiver nor omission by other co-owners to seek reference nor disentitle them to an award to the extent of their legal entitlement when in law they are

entitled to. Since the acquired property being the ancestral coparcenary and continued to be kept in common among the brothers and the income

derived therein was being shared in proportion of their shares by all the brothers it remained as joint property. As co-owners everyone is entitled to 1/4

share therein. It was also laid by this Court in a recent judgment in Ram Kumar & Ors. v. Union of India & Ors., [1991] 1 SCR 649 that it is the duty

of the Collector to send full information of the survey numbers under acquisition to the court and make reference under section 18 and failure thereof

is illegal. The same ratio would apply to the facts in this case as well.

When one of the co-owner 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 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 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. AIR 2003 Supreme Court Cases 620 case

titled as Jalandhar Improvement Trust v State of Punjab and others.

11. It is apparent from the aforesaid exposition of law laid down by the Honâ??ble Apex Court as well as this Court that co-owners, who have/had not sought reference under Section 18 of the Act, are also entitled to enhanced compensation on pro-rata basis as per their shares. In the instant case, it is not in dispute that co-owners of Award Holders had filed petition under Section 18 of the Land Acquisition Act and in those proceedings amount of compensation awarded by the Land Acquisition Collector was enhanced and as such Award Holders being co-owners qua the land acquired by the respondent No.1.

12. Though this court has already held herein-above that the co-owners, who have/had not sought reference under Section 18 of the Act, are also entitled to enhanced compensation on pro-rata basis as per their shares, but careful perusal of the material available on record, especially impugned order passed by learned Court below, clearly reveals that the learned Additional District Judge, Kullu, while passing impugned order, has miserably failed to appreciate the facts of the case and has not even bothered to take into consideration the law laid down by this court in Dinesh Kumar (supra), wherein it has been categorically held that co-owners can not be denied enhanced compensation on the ground that they did not come forward for re-determination of the amount of compensation on the basis of Award of the court under Section 28-A of the Act *ibid*. Leaving it aside, this court finds that the learned Presiding Officer had been passing contradictory orders on the issue at hand, because in the identical case having been decided by him i.e. Execution Petition No. 13 of 017, titled Pune Ram (deceased) vs. LAC and others, he held that the claim for enhanced compensation of the acquired land jointly owned by parties, can not be denied on the ground that co-owner had not filed an independent reference under Section 18 of the Act.

13. Consequently, in view of the detailed discussion made herein above as well as law laid down by the Honâ??ble Apex Court, the order dated 16.5.2018, passed by learned Additional District Judge, Kullu, Himachal Pradesh in Execution Petition No. 57/2017 titled Lesru Ram since deceased through Legal Heirs (a) kalu Devi etc. vs. Collector Land Acquisition etc., deserves to be set aside being against the aforesaid exposition of law.

14. Accordingly, the present petition is allowed. Order dated 16.5.2018, passed

by learned Additional District Judge, Kullu, Himachal Pradesh in

Execution Petition No. 57/2017 is set aside and quashed. Executing Court is directed to proceed further in accordance with law.

Pending applications, if any, are disposed of.