
(2009) 02 P&H CK 0124
In the Punjab And Haryana At Chandigarh

Market Committee

APPELLANT

Vs

Man Singh and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 18, 28A, 54

Citation : (2009) 154 PLR 48

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Garg, J.—This judgment of mine shall dispose of Civil Revision Nos. 3224, 3610, 3611 and 3619 of 2008 as similar question of law arises in the similar facts and circumstances. However, the facts are taken from Civil Revision No. 3224 of 2008 for the sake of convenience.

2. Brief facts of this petition are that respondents No. 1 to 21 were owners of land, being co-sharers, which was acquired by the State of Haryana for carving out New Grain Market, Karnal. The respondents were awarded compensation for the acquired land as per the award of the Land Acquisition Collector. However, reference petitions u/s 18 of the Land Acquisition Act (hereinafter referred to as the "Act") filed by the claimants/land owners were dismissed vide judgment/award dated 30.9.1998 by the Additional District Judge, Karnal holding that the land owners have already been paid the compensation at the market rate. Thereafter, being dissatisfied with the aforesaid award of the Additional District Judge, Karnal, some of the claimants namely Sh. Ram Dia etc. filed an appeal before this Court which was allowed vide judgment dated 7.10.1999 and compensation in respect of their acquired land was awarded at the rate of Rs. 110/- per sq. yard along with other statutory benefits. It is relevant to mention here that the aforesaid appeal was filed by the claimants only qua their share of the acquired land. The respondents herein did not file any appeal before this

Court nor did they file any application for redetermination of compensation and therefore, the award dated 30.9.1998 passed by the Additional District Judge, Karnal became final qua them.

3. The respondents filed an execution application on 9.10.2004 in the Court of Additional District Judge, Karnal for grant of enhanced rate claiming that they have filed an appeal against the above said order dated 30.9.1998 and the same was accepted by this Court vide judgment and decree dated 7.10.1999 and market value of their acquired land was determined at Rs. 110/- per sq. yards along with other statutory benefits. The aforesaid execution application filed by the respondents was contested by the petitioner by filing objections, specifically stating therein that their reference applications were dismissed by the Additional District Judge, Karnal and they have not applied for any redetermination etc. or enhancement of the compensation by filing an appeal to this Court. The Additional District Judge, Karnal dismissed the objections filed by the petitioners vide impugned order dated 23.2.2008 and ordered that although the respondent/decree-holders did not file an appeal before the High Court yet they are entitled to the same amount of compensation as awarded by the High Court in the appeal filed by the other co-owners/co-sharers qua their share. Feeling aggrieved, the petitioners have challenged the aforesaid order in these revision petitions.

4. Learned Counsel for the petitioner has vehemently argued that the impugned order is liable to be quashed on the sole ground that the award dated 30.9.1998 passed by the Additional District Judge, Karnal has become final qua the respondents as they have not filed any appeal for enhancement against the same nor they have filed any application for re-determination of compensation and therefore, they are not entitled to any enhanced compensation. Elaborating this argument further, learned Counsel for the petitioner has argued that after passing of the award dated 30.9.1998, the respondents have not pursued their remedy u/s 54 to this Court for further enhancement of compensation and therefore, they are not entitled to seek the same benefit of enhanced compensation which have been granted to some of the claimants who perused their appellate remedy u/s 54. In support of his arguments, learned Counsel for the petitioner has relied upon a judgment of the Hon"ble Apex Court in AIR in the case of Hukam Chand and Others Vs. State of Haryana and Others, .

5. On the other hand, learned Counsel appearing on behalf of the respondents have argued that admittedly the respondents were co-sharers of the acquired land and undisputedly some of the co-sharers who had pursued their appellate remedy u/s 54 of the Act were awarded higher compensation, and therefore, the co-owners of the acquired property are also entitled to receive compensation and the State cannot plead that the co-owner is disentitled to the compensation as they have not sought enhancement. It has been further argued by the learned Counsel for the respondents that upon acquisition of joint property, enhancement of compensation, on an application by one of the co-sharers, will ensure the benefit of all co-sharers and therefore, they are entitled to the benefit of

enhanced compensation as granted to the other co-sharers by the High Court. In support of their arguments, learned Counsel for the respondents have relied upon the judgments of Hon''ble Apex Court in A. Viswanatha Pillai and others Vs. Special Tahsildar for Land Acquisition No. IV and others, and Patiala Improvement Trust Vs. Amar Singh and Others, .

6. I have heard learned Counsel for the parties.

7. The facts are not in dispute. Admittedly, the award dated 30.9.1998 passed by the Additional District Judge, Karnal in the case of respondents has become final and there is no dispute with regard to the payment of compensation on the basis of the said award. It is also not in dispute that in the execution application filed before the Additional District Judge, Karnal, the respondents had claimed compensation at the enhanced rate of Rs. 110 per sq.yard along with statutory benefits as enhanced by this Court on an appeal against award dated 30.9.1998 passed by the Additional District Judge, Karnal filed by a co-sharer qua his share only. The argument raised by the learned Counsel for the respondents is misconceived. Both the judgments relied upon by the respondents are not applicable in the facts of the present case as in both these judgments, the Hon''ble Apex Court and this Court were interpreting the rights of a co-owner to receive compensation for his share on the basis of enhancement made by the Reference Court in a reference application made by the other co-sharers for whole of the land. In the case of A. Viswanatha Pillai (supra) the acquired property was ancestral coparcenary property and one of the co-parceners had sought reference on behalf of co-owner for the acquired land and the State has made payment qua the share of the co-sharer who sought reference and denied the benefit of enhancement to other co-sharers on the ground that they had not sought any reference and in those circumstances, the co-sharers were held entitled to the payment of enhanced awarded by the Reference Court. Similarly, in the case of Patiala Improvement Trust (supra) the compensation was enhanced on a reference u/s 18 of the Act and it was held that on acquisition of joint property, enhancement of compensation on application of one co-sharer will enure to the benefit of all co-sharers if the Court u/s 18 fixed the rate of entire land and a specific order qua entire land is passed, the non-applicant co-sharers u/s 18 can also execute the same award to receive their share of enhanced compensation. The aforesaid judgments referred to by the respondent/claimants are not applicable inasmuch as the question posed in the case of A. Viswanatha Pillai (supra) is whether the co-owners who did not expressly sought reference, are entitled to enhanced compensation pro rata as per their share on the basis of an award taken on reference sought by another co-owner. Similarly, in the case of Patiala Improvement Trust (supra) the question before this Court was whether non-applicants co-sharers were entitled to benefit of enhancement of compensation awarded u/s 18 of the Land Acquisition Act which was fixed for the entire land, whereas in the present case in execution application distribution of enhanced compensation is sought on the ground that on an appeal filed by a co-sharer qua his share enhancement has been made by the High Court and the

other co-sharers are also entitled to the same in spite of the fact that no appeal has been carried out by the respondents qua their share.

8. The facts of the present case are similar to the case of *Hukam Chand and Others Vs. State of Haryana and Others*, . In that case the appellants availed the remedy of reference u/s 18 and thereafter, they did not pursue appellate remedy u/s 54 to the High Court for further enhancement of compensation but some of the claimants pursued the appellate remedy and had further enhanced compensation at Rs. 135/- per sq. yard and in those circumstances, the Hon''ble Supreme Court held that having not availed of the remedy u/s 54, the appellants were not even entitled to make an application u/s 28-A(1) to seek the same benefit of enhanced compensation by way of redetermination. Similar view was expressed by the Hon''ble Supreme Court in the case of *The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others*, , *Babua Ram and Others Vs. State of U.P. and Another*, . It may also be relevant to mention here that in *K.S. Paripoornan Vs. State of Kerala and Others*, , the payment of different compensation for the similar land was held not to be violative of Article 14 of the Constitution of India.

For the aforesaid reasons, all the petitions are allowed and the impugned orders are set aside and execution applications filed by the respondents are ordered to be dismissed.