(2013) 07 P&H CK 0596

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No''s. 3431 and 4639 of 1997 (O and M)

Mohinder Singh — APPELLANT

Vs

The Hoshiarpur Improvement Trust
 The Hoshiarpur Improvement Trust Vs Mohinder Singh — RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:
- Constitution of India, 1950 — Article 226
- Land Acquisition Act, 1894 — Section 23(1A), 28

Citation : (2013) 172 PLR 135

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Sanjiv Pandit in CR No. 3431 of 1997, for the Appellant; Sanjiv Pandit, Advocate in CR No. 4639 of 1997 and Mr. Sandeep Khunger, Advocate for the Improvement Trust, for the Respondent

Judgement

K. Kannan, J.—The revision in Civil Revision No. 3431 of 1997 by the landowners-Mohinder Singh and Mohan and the revision in Civil Revision No. 4639 of 1997 is by the Improvement Trust. The revision by the landowners is against the plea that compensation awarded to a joint owner, namely, Mohinder Singh in civil appeal to the Supreme Court at Rs. 60/- per square yard must be afforded to the other co-owner, Mohan as well, irrespective of the compensation as determined by the Land Acquisition Tribunal, Improvement Trust. The revision by the Improvement Trust is as regards a provision for interest even during the time when there was an order of stay issued by the institution of writ proceedings by landowners. In this case, the acquisition had been done for Hoshiarpur Improvement Trust for the purposes of its development scheme under the Punjab Town Improvement Act of 1926. The notification issued u/s 42 had been the subject of challenge by the petitioners in a writ petition filed before this Court. It appears that independently of the writ, there had been an award passed determining compensation pursuant to the notification issued and when the petitioners were dissatisfied about the quantum assessed, a reference had been made in Reference No. 109 of 1980 before the Land Acquisition Tribunal, Improvement Trust, Hoshiarpur.

2. The writ petition challenging the notification issued u/s 42 was dismissed by this Court but it appears that only one of the landowners, namely, Mohinder Singh had filed a civil appeal No. 3017 of 1979. The manner of disposal of the judgment of the Supreme Court and the way it was sought to be worked in execution by one of the co-owners Mohan are the subject of adjudication before this Court and, therefore, it would be worthwhile to reproduce the text of the judgment of the Supreme Court along with the cause title:-

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3017 OF 1979

Mohinder Singh ....Appellant.

Versus

The Hoshiarpur Improvement Trust & Anr. .....Respondents.

ORDER

This appeal is directed against the judgment and order of the High Court of Punjab & Haryana dated 12.12.1978 dismissing the writ petition filed by the petitioner under Article 226 of the Constitution challenging the validity of the land acquisition proceedings taken by the Hoshiarpur Improvement Trust for purposes of its development scheme.

The land acquisition proceedings were taken in 1976 and the possession of the land has been taken by the Improvement Trust and the development scheme is being enforced but in view of the interim order passed by this Court the appellants'' land has not been developed although the Improvement Trust has taken possession of the same. During the course of hearing it was stated on behalf of Mohinder Singh the appellant, that if he was awarded a reasonable amount of compensation, he would not pursue the appeal challenging the validity of the land acquisition proceedings. Having regard to the facts and circumstances of the case and the delay in implementing the development scheme we direct the respondent Trust to pay compensation to Mohinder Singh the appellant for the land which has been acquired from him at the rate of Rs. 60 per square yard.

Learned counsel for the appellant urged that the appellant should be awarded solatium and interest at the enhanced rate in accordance with the Amending Act of 1984. We do not consider it necessary to pass any order in this respect as we are informed that the question whether the enhanced solatium and interest is payable to a claimant under the amending Act of 1984 on account of the pendency of case before the Supreme Court has been debated before a Constitution Bench of this Court and its judgment is awaited. We are therefore of the opinion that on the delivery of the judgment of the Constitution Bench if the appellant is entitled to claim enhanced solatium and interest in accordance with the amending Act of 1984 he may apply to the Land Acquisition Officer/Collector for the payment of the same and in that event the Land Acquisition Officer/ Collector will determine the amount and direct the respondents to pay the same to the appellant. Meanwhile the solatium and interest at the rate payable to a claimant under the Land Acquisition Act prior to the amending Act of 1984 shall be paid to the appellant on the compensation determined at the rate of Rs. 60 per square yard.

The appeal is accordingly disposed of. There will be no order as to costs.

Sd/- (K.N. Singh)

Sd/- (M.H. Kania)

New Delhi

July 20, 1988

3. Of the two brothers, Mohan had not joined with Mohinder Singh in preferring the appeal to Supreme Court. The contention is that the acquisition was brought through a single notification and on their objection regarding the quantum as assessed, the reference to the Land Acquisition Tribunal itself had been made by a single order of reference in 109 of 1980. The possession of the petitioner along with his brother was joint and even a challenge in the writ petition was only as regards the joint interest in the property. When one of the brothers Mohinder Singh challenged the order of the High Court, he was literally canvassing for the joint rights and the benefit of compensation as awarded on a concession made by the Improvement Trust must be taken as a concession made for Mohan''s benefit as well.

4. The learned counsel for the Improvement Trust would make reference to the fact that when the Court was referring to some proposal for a reasonable amount of compensation, it was actually adverting only to a plea made on behalf of Mohinder Singh, who was the appellant and when he was stating before the Court that he would not pursue the challenge about the validity of the land acquisition proceedings, if he was paid a reasonable amount, it must be taken as a direction for the benefit of Mohinder Singh alone. The counsel for the Trust would also argue that the language of the Supreme Court in the order that directed the respondent-Trust to pay compensation to Mohinder Singh could not be understood by any stretch of imagination to include the name of the petitioner as well. He would therefore urge that the benefit of compensation at Rs. 60/- per square yard cannot be extended to Mohan who had not joined in the appeal to Supreme Court. The counsel would argue that when the award was passed on a reference by the Land Acquisition Tribunal regarding the quantum of compensation assessed, there had been no independent challenge to the quantum by the brothers and though Mohinder Singh did not come by means of

a challenge, he could take the benefit of the Supreme Court''s direction, on a concession made exclusively to him, the way that the present petitioner cannot.

5. I have seen the judgment of the Supreme Court and it seems at first blush that the Trust was being directed to pay compensation only to the appellant before the Supreme Court who was Mohinder Singh. It would have really been material, if the claim to compensation was for distinct parcels of land which each one of the brothers had claimed independently. The petitioners'' argument is that the property acquired was joint and when both of them were staking claims to the property and were objecting to acquisition notification, the writ petition had also been filed by both the parties joining together. The reference to the Land Acquisition Tribunal was also a single reference and not two independent references for each one of their shares. In effect, the interest which Mohinder Singh was canvassing for before the Supreme Court must be understood as a contention made on his brother''s behalf as well.

6. If the order of the Supreme Court has to be understood in its full play, to me, it would become surely relevant to examine how the reference had been made and how the earlier challenge to the notification was made before the High Court. In law, a co-owner is always entitled to represent yet another co-owner. He is entitled to protect interest of other co-owners in his own right even without describing himself to be representing for yet another. This is recognized in all branches of law that allow for canvassing interest of the co-owners. As an example, both under rent control proceeding and in any civil proceeding relating to injunction, it shall be perfectly tenable for a co-owner to maintain an action in his own name without reference to the other co-owners not merely with reference to his fractional share but with reference to whole of the property. Such a suit or proceeding can stand in his own name without describing himself as a representative of others. The only restriction to such pleading would be that he takes no plea which is adverse to yet another co-owner or co-owners. In this case, when Mohinder Singh was canvassing the correctness of the order of the High Court that refuted their joint challenge to the acquisition notification, he was doing so not merely for his fractional half share but he must be taken as doing so on behalf of other co-owner. For the interpretation that I have adopted, I would find a precedent in judgment of Division Bench of this Court in Punjab State (Now Haryana) Vs. Globe Motors Ltd and Another, where the Court was considering the effect of an acquisition of a joint land and when a reference had been made u/s 18 by one of the co-sharers, the Division Bench was holding that the benefit of the award given by the judge must be available for the rest of the co-owners as well and the fact that others had not joined was irrelevant. The language adopted in the Supreme Court referring to the determination of compensation to Mohinder Singh must under the special circumstances in which the previous proceedings in the lower tiers of the adjudicatory bodies have been dealt with must be understood as a benefit available for Mohan as well.

7. I set aside the order of the court below and direct that the benefit of

compensation at the rate of Rs. 60/- per square yard with other benefits as contemplated by the judgment of the Supreme Court shall be extended to both the petitioners and not merely to one of them. This would dispose of the civil revision in 3431 of 1997 and I hold that the Civil Revision No. 3431 of 1997 is allowed.

8. As regards the contention of the Trust that the interest during the period of stay shall be excluded, the learned counsel refers me to the judgment of the Supreme Court in S. Prabh Singh Dhillon and Others Vs. Hoshiarpur Improvement Trust and Others, , where the Court held that the payment of interest u/s 28 and the additional amount u/s 23(1-A) of the Land Acquisition Act are intended to mitigate hardship caused by deprivation of enjoyment of property and if the possession remains with the landowners, they are not entitled to interest and additional amount till then. The argument is that the Improvement Trust was unable to put the property to the developmental uses and, therefore, the petitioners cannot be granted the benefit of interest.

9. The interest and additional amount as provided under Sections 28 and 23(1-A) under the Land Acquisition Act is statutorily protected and are not matters of discretion of Court. In this case, the acquisition and the award were for a period prior to the amending Act of 1984 and, therefore, the benefit that the claimants were looking for was only the benefit u/s 28. Section 28 itself makes commencement of the calculation of interest from the date on which the Collector took possession of the land to the date of payment of such excess which is determined by a Court. Even as explained by the judgment in S. Prabh Singh, it is the deprivation of the user of the property for a private individual that obtains primacy and not the manner of user by the State. The interest therefore is a recompense for the loss of income from the property which an individual could have put the property, if not for such acquisition notification and denial of possession. The corollary is not necessarily that the Government must have also put the property to use. The interest under the Land Acquisition Act is for the deprivation of land for a private individual. This is how the Section must be understood for many a time, the government may acquire some property but may not immediately put it to use. Still liability for interest never ceases. I would therefore find it immaterial that the Improvement Trust did not have the benefit of acquisition immediately. It is seen from the order of the judgment itself that on record the Improvement Trust had taken possession of the property in 1976. The grievance before the Supreme Court was that the development scheme was being enforced but in view of the interim order passed by the Supreme Court itself, the land had not been developed although the Improvement Trust had taken possession of the same. In the context in which the expressions are used, I would understand the interim order obtained by the landowner referred to be a restraint for further development. It had nothing to do with handling back possession to the landowners or allowing for the enjoyment of the property to the landowners. Consequently, interest was bound to be paid to the landowners even during the period when the Improvement Trust could not develop the

property. The order passed already by the Executing Court providing for interest would therefore require to be sustained and the revision filed by the Improvement Trust in Civil Revision No. 4639 of 1997 would require to be dismissed and accordingly dismissed.

