
(2010) 02 P&H CK 0162

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 7236 of 2009 (O&M)

Parkasho & Anr.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 181(4), 200, 202, 482

Land Acquisition Act, 1894 — Section 28A

Penal Code, 1860 (IPC) — Section 406, 498a

Citation : (2010) 2 Law Herald 1676 : (2011) 5 RCR(Civil) 493

Hon'ble Judges : Rajesh Bindal, J

Advocate : Mr. Naresh Kaushal, Advocate.; For the Respondent: Mr. Palvinder Singh, Senior Deputy Advocate General, Punjab., Advocates for appearing Parties

Judgement

Rajesh Bindal J.—The land owners have approached this Court challenging the order dated 21.2.2009, passed by the learned court below in execution proceedings, whereby the amount deposited by the State towards the share of the petitioners on account of acquisition of land, has been refused to be released in their favour.

2. Briefly, the facts are that the petitioners are coowners of land along with Parma Nand and Sarwan Singh. The land in question was acquired by the State of Punjab vide notification dated 30.6.1998 for the purpose of developing a permanent parking area. Dissatisfied with the award, the land owners filed objections, which were decided by the learned court below on 7.10.2003 and the amount of compensation was enhanced. Reference was filed only by two of the cosharers and not all of them. The execution was filed by all the cosharers of the land. Even the State deposited the compensation pertaining to the entire land including the land falling to the share of the petitioners in the joint khewat, but still the learned court below, vide impugned order, while directing release of the amount of compensation to the other two cosharers, who had filed reference before the learned court below, directed that the amount pertaining to the share of the petitioners be kept intact and be not released to them. It is against this

order that the petitioners are before this Court.

3. Learned counsel for the petitioners raised a very brief argument, namely, that in view of the settled position of law, every cosharer is entitled to same amount of compensation, as has been granted to even one of the cosharer, who had sought enhancement of the compensation. Even a petition under Section 28A of the Land Acquisition Act, 1894 (for short, "the Act") is also not required to be filed and the amount can be claimed by way of execution proceedings only. Reliance was placed upon Patiala Improvement Trust through its Chairman v. S. Amar Singh and others, 2005(2) LACC 126. It was further submitted that even the State had deposited the amount of compensation falling to the share of the petitioners and had no objection to the release of the same, but still the learned court below refused to do the needful.

4. Learned counsel for the State could not raise any argument in defence considering the judgment, referred to by learned counsel for the petitioners. However, it was not disputed that the petitioners are coowners of the land with Parma Nand and Sarwan Singh in a joint khewat.

5. Heard learned counsel for the parties and perused the paper book.

6. The issue as to whether all the cosharers are entitled to same amount of compensation or not in spite of the fact that some of them had not even filed objections and sought enhancement of the market value of the land, or not, is no more res integra. The issue was considered by Hon"ble the Supreme Court in A. Viswanatha Pillai and others v. The Special Tahsildar for Land Acquisition No. IV and others, (1991) 4 SCC 17 and it was opined 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 prorata 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.?

7. The issue was thereafter considered by Hon"ble the Supreme Court in Jalandhar Improvement Trust v. State of Punjab and others, (2003) 1 SCC 526 and following the aforesaid judgment, it was opined that a coowner is entitled to have the benefit of enhanced compensation given to other coowners in a reference made at their instance in respect of the land acquired, which belonged

to all of them, jointly. It can be granted even if an independent application filed by one of the coowners was dismissed on account of delay. Relevant paragraph 5 thereof is extracted below:

¶5. Having regard to the view we propose to take and the manner of disposal intended to be given, it is unnecessary for us to even advert to the relevance or applicability of Section 28A of the Act to the case of the nature before us. The 4th respondent indisputably is a coowner along with her children who were added as petitioners 2 to 5 to the award dated 5.2.1986, in which case, even on the first principles of law one coowner is entitled to have the benefit of the enhanced compensation given in respect of the other coowners in a reference made at his instance in respect of the land acquired, which belonged to all of them, jointly. So far as the fact that in this case the 4th respondent's application for reference under Section 18 was rejected by the Tribunal ultimately on the ground that the reference was made on a belated application, does not make any difference and, is no reason, in our view, to differentiate the claims of such coowners whose claims came to be really sustained and that of the 4th respondent, for differential treatment. We are fortified to some extent in the view expressed above, by the principles laid down by this Court in the decision reported in *A. Viswanatha Pillai v. Special Tahsildar for Land Acquisition*.?

8. The aforesaid view was followed by this Court in *Patiala Improvement Turst's* case (*supra*), where challenge was to an order passed by the learned Executing Court directing the release of compensation payable to a coowner of the land, who had not approached the court for enhancement of compensation, whereas other coowners had approached. The challenge to the order passed by the Executing Court was negated and release of the amount of compensation in favour of all the coowners at the same rate even where some of them had not sought enhancement of compensation, was upheld.

9. Considering the consistent enunciation of law by Hon^{ble} the Supreme Court, as followed by this Court, and applying the same to the facts of the present case, where it is not in dispute that the petitioners are cosharers of land with Parma Nand and Sarwan Singh sons of Mehlar Singh, who are none else than real brothers of the petitioners and that Parma Nand and Sarwan Singh had filed Land Reference No. 295 dated 30.7.1999, which was disposed of by the learned court below on 7.10.2003 further enhancing the amount of compensation, in my opinion, the petitioners are certainly entitled to get the same amount of compensation in execution proceedings itself. The cosharers of the land cannot be discriminated in the matter of payment of compensation as far as value of the land is concerned. The impugned order of the learned court below directing the share of compensation of the petitioners, even though deposited by the State, intact is not in conformity with law. Accordingly, the same deserves to be set aside. Ordered accordingly. It is directed that the amount of compensation of the share of the petitioners be released to them forthwith. The petition stands disposed of in the manner indicated above.