(2005) 02 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3358 of 2000

Patiala Improvement Trust APPELLANT

Vs

Amar Singh and Others RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 24A, 28A

Citation : (2005) 140 PLR 150 : (2005) 2 RCR(Civil) 332

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Kanwaljit Singh, for the Appellant; M.L. Sarin and N.P.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity ''the Code'') prays for quashing order dated 6.6.2000 passed by the executing Court in Execution Application No. 1251/ 15.5.1988. The executing Court has issued/directions to the judgment debtor petitioner to pay compensation to the respondents in the same manner as the compensation has been paid to the other co-owners whose land was acquired by the judgment debtor-petitioner. A period of one and half months has been fixed to make the payment.

2. Brief facts of the case are that the judgment debtor-petitioner Improvement Trust, Patiala acquired 14 bighas 13 biswas of land belonging to the respondents and his children who are admittedly co-shares and co-owners. The Collector announced his award u/s 11 of the Land Acquisition Act, 1894 (for brevity ''the Act'') on 20.2.1978. The children being co-sharer sought reference u/s 18 of the Act and the amount was enhanced by the Tribunal on 22.9.1986. The respondents are owner and co-sharer to the extent of 1/7th share in the total land. The order passed by the Tribunal has attained finality as the SLP filed by

the judgment-debtor petitioner has been dismissed by the Supreme Court on 26.11.1990.

3. The other co-sharer/co-owner to the extent of 6/7th share filed execution on 18.2.1987 and the respondent filed an application for execution on 15.5.1988 asserting that he was entitled to the execution of the award as per the land Reference No. 15 of 1979 read with Reference No. 29 of 1979. The decree sought to be executed is dated 22.9.1986 which obviously has reference to the order made by the Tribunal enhancing the compensation on the reference made by the co-sharer. The Improvement Trust opposed the execution by filing objections on 3.12.1988. Although on 7.5.1999 the counsel for the respondents submitted that he would file an application u/s 28A of the Act before the Collector yet the execution was pressed and the executing Court has passed the order directing the judgment debtor to enhance the compensation of the respondents although he was not a party before the Tribunal when the order dated 22.9.1986 was passed. The executing Court has placed reliance on a judgment of the Supreme Court in the case of A. Viswanatha Pillai and others Vs. Special Tahsildar for Land Acquisition No. IV and others, .

4. Shri Kawaljit Singh, learned counsel for the judgment debtor petitioner, has argued that the respondent cannot acquire the benefit of enhanced compensation as ordered by the Tribunal in its order dated 22.9.1986 because the did not file any reference u/s 18 of the Act. According to the learned counsel the only course open to the respondents is to file an application u/s 28A of the Act for re-determination of his right for the grant of benefit of the order dated 22.9.1986. In the absence of any order passed by the Collector which is the competent authority u/s 28A of the Act the benefit of the order dated 22.9.1986 passed by the Tribunal cannot be granted to him. The learned counsel has further argued that the execution can take place only in respect of the decree passed in favour of respondent. In the absence of any judgment and decree in favour of the respondent the executing court cannot on its own convert the judgment and decree dated 22.9.1986 to the one in favour of the respondent as he was not a party. Referring to the order dated 7.5.1999 passed by the executing Court the learned counsel has submitted that even the respondent has committed himself to the filing of an application u/s 28A of the Act. In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of Ramesh Singh (died) By LRs and Others Vs. State of Haryana and Others, and Irshad Ali and Ors. v. Hazi Abdul Sukhur Mozumdar and Ors. 1997(4) I.C.C. 64 and argued that once the co-sharer has failed to seek a reference then no benefit of the order of the Tribunal dated 22.9.1986 could be obtained by the claimant-respondent. The learned counsel has also placed reliance on another judgment of the Supreme Court in the case of State of Andhra Pradesh v. Marri Venkaiaah and Ors. 2003 AD (S.C.) 36 to argue that the only way to avail the benefit of an order of enhanced compensation made by the Tribunal is to move an application u/s 28A of the Act. In the present case the afore-mentioned application cannot be entertained as it is hopelessly time barred

which was required to be filed within three months of the date of the order of enhancement. He has also cited the judgment of the Supreme Court in the case of Bhagwati v. State of Haryana, 1997(1) All India Land Acquisition and Compensation Cases 246 and Tota Ram v. State of U.P. 1998(1) L.A.C.C. 73 for the aforesaid proposition.

5. Shri M.L. Sarin, learned counsel for the respondents has argued that there are sustainable doubts about the maintainability of the revision petition u/s 115 of the Code as the order dated 6.5.2000 is an interlocutory order and it has not attained finality determining the rights of the parties. The learned counsel has placed reliance on a judgment in the case of Bikramjeet Singh v. Ramesh Kumar and Ors. (2002)132 P.L.R. 780. Addressing arguments on merits, the learned counsel has argued that the question posed in the judgment of the Supreme Court in the case of A. Vishwanatha Pillai (supra) is whether the co-owners who did not expressly seek reference are entitled to enhanced compensation pro-rata as per their share on the basis of a decision taken on a reference sought by another co-owner. According to the learned counsel the answer has been given in the affirmative. In support of his argument, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of Jalandhar Improvement Trust v. State of Punjab and Ors. (2003)133 P.L.R. 589 (S.C.) and another judgment of this Court in the case of Lal Singh and Others Vs. State of Haryana and Others, and argued that the rationable of these judgments is that once a co-sharer is held entitled to enhanced compensation then the other co-sharers would have to be governed by the same yard-stick which has been applied to the one who has been granted enhanced compensation. The learned counsel has pointed out that the order dated 22.9.1986 passed by the Tribunal has attained finality upto the Supreme Court was SLP as dismissed on 26.11.1990.

6. 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 Pillai (supra) is meritorious. A specific question posed in para 2 in the afore-mentioned case is whether the other co-owners 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 of another co-owner. The answer given to the afore-mentioned question is based on the principle that all the co-sharers are in possession and owner of every part of the land. The views of the Supreme Court becomes explicit from the last para of the judgment which reads as under:

"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 u/s 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."

7. The afore-mentioned view of the Supreme Court squarely answers the controversy raised in this petition in favour of the claimant-respondent because it is admitted position the claimant-respondent is the co-sharer/co-owner 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.

8. The case of the claimant-respondent cannot be defeated on the ground that claim for payment of enhanced compensation has been made in the execution. The execution of the order of the Tribunal dated 2 2.9.1986 has been sought. A perusal of the execution application filed by the claimant-respondent would show that he is seeking execution of land reference No. 15 of 1979 read with land reference No. 29 of 1979. The Tribunal has fixed the flat rate of Rs. 93/- per s q. yard for the whole of the acquired land. The relief granted by the Tribunal in paras 2, 5, 26, 27 and 28 reads as under:

"The above market rate in the peculiar circumstances of the case cannot be held universally applicable to the lands covered by all the land references. So far as claimants of land reference No. 15, who are original owners are concerned, they deserve to be compensated for whole of their acquired land at the flat rate of Rs.93/-per sq. yard, I order accordingly.

As regards the other claimants, they are all purchasers of small plots from their original owners, and the sales in their favour took place nearly one year prior to the date of notification. In these circumstances they are apparently entitled to be reimbursed so as to restore them to the position in which they were before purchasing their plots. Consequently, they shall be paid as compensation whatever money they had expended on the actual purchase of plots, on stamp duty and registration charges. Besides this pay, they shall be entitled to an additional sum of 11% on account of appreciation in value during the span of one year that elapsed between the date of their purchases and the date of their acquisition.

On account of the compulsory acquisition Collector had paid solatium on the amount of compensation awarded by him at the old rate of 15% while in law the claimants have become entitled to solatium at the enhanced rate of 30%. Accordingly, the claimants are also held entitled to difference of 15% of solatium on the compensation amount awarded by the Collector.

The amount shall be reduced by the sum already awarded by the Collector as compensation. On the enhanced amount, claimants shall be entitled to statutory solatium on the rate of 30% and interest at the rate of 9% per annum for the first year from the date of dispossession of the land owners by the Collector and at the rate of 15% thereafter till the date of deposit in this Court, the enhanced amount of compensation.

Under Section 23(1-A) of the Act claimants shall also be entitled to 12% per annum on the market value of the acquired land from the date of notification u/s 36 till the date of award of the Collector of the date of taking possession of the land whichever is earlier."

9. The view of the Tribunal shows that claimant-respondents are not banking upon non existing judgment and decree as is sought to be claimed by the learned counsel for the petitioner. The judgment is in existence and the flat rate of compensation has been assessed in respect of the whole land.

10. The argument that the claimant-respondent should first seek re-determination would not call for any detailed consideration because u/s 28A of the Act the expression "the persons interested in all the other land covered by the same notification u/s 4 Sub-section (i)" would not include co-sharer provided he has not earlier sought reference. For the afore-mentioned view reliance could be placed on the ratio of the judgment of the Supreme Court in the case of A. Vishwantha Pillai (supra). Reliance of the petitioner on the judgment of the Supreme Court in the case of Ramesh Singh (supra) does not advance his case because the reference sought by the claimant in the afore-mentioned judgment was dismissed by the Civil Court. However, compensation was enhanced in respect of another claimant who sought a separate reference. It was in these circumstances that the Supreme Court held that the claimant who had lost could not seek enhancement of compensation in execution proceedings initiated at the instance of successful claimant in the independent reference. Such an unsuccessful claimant cannot even file an application u/s 24A of the Act for re-determination of compensation on the basis of enhancement of compensation ordered by the reference Court in the case of co-owner. Obviously, the judgment has no application to the case in hand as the claimant-respondent cannot be estopped or no resjudicata could be pleaded against him as was the position in Ramesh Singh''s case (supra). It is undisputed that the claimant-respondent did not file any reference u/s 18 of the Act nor an application u/s 28A of the Act. The other judgments in the cases of Bhagwati and State of Andhra Pradesh (supra) do not help the judgment debtor-petitioner because their applications filed u/s 28A of the Act were found to be beyond the period of three months. Accordingly the applications were dismissed and the orders passed by the Collector were upheld by the Supreme Court. Again the ratio of the afore-mentioned judgments would not apply to the facts of the present case for the same reasons which have been given to distinguish the judgment in the case of Ramesh Singh (supra). Therefore, there is no substance in the argument raised by the learned counsel for the petitioner.

In view of the above, the instant petition fails and the same is dismissed. As the executing court had fixed a period of one and half months to pay the compensation to the claimant-respondent from the date of the order i.e. 6.6.2000 it would be just and proper to direct the petitioner to pay the amount of compensation as per the directions of the executing Court within a period of two months from today.

The parties through their counsel are directed to appear before the executing Court on 7.3.2005.