
(2016) 10 P&H CK 0128
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 4662 of 2014 (O&M)

Ram Chander

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 27-10-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 18, Section 28A

Citation : (2016) 4 LawHerald 3533 : (2017) 1 PLJ 13

Hon'ble Judges : Mr. Amit Rawal, J.

Bench : Single Bench

Advocate : None, for the Respondents; Mr. P.C. Yadav, Advocate, for the Petitioners

Final Decision : Allowed

Judgement

Amit Rawal J.(Oral) - The petitioners are aggrieved of the impugned order dated 16.11.2012 (Annexure P-3) whereby the misc. application bearing No.202 of 2011 for seeking appropriate directions to the judgment debtors/respondents to deposit the amount of compensation of the acquired land in the ratio of the amount enhanced by this Court vide order dated 9.9.2008 passed in LPA No. 136 of 2003 in RFA No.2602 of 1993 titled "Jai Bhagwan v. State of Hayana" on the premise that other co-owners have been granted benefit of enhanced compensation i.e. Ronki Ram and others whereas the petitioners were deprived of the same, has been dismissed.

2. Mr. P.C. Yadav, learned counsel appearing for the petitioners submits that the petitioners at earlier point of time approached this Court vide C.R. No. 3394 of 2008 titled as "Sadhu Ram and others v. State of Haryana" challenging the order dated 05.02.2008 passed by the erstwhile Executing Court in execution petition bearing No.533 of 2005 whereby their claim for payment of enhanced compensation of area measuring 92 marlas of Khasra No.13 Rectangular No.31 was rejected. This Court vide order dated 21.01.2010 disposed of the revision petition by relying upon the ratio decidendi culled out in Furkan Ali v. State of

Haryana and others 2006(4) RCR (Civil) 641 holding that the petitioners had not placed on record any material to depict that other co-sharers of Khasra No.13 have received enhanced compensation.

3. The aforementioned order was assailed by the petitioners in the Hon"ble Supreme Court vide SLP (Civil) CC No.8644 of 2010 titled as "Waryam Singh and others v. State of Haryana and another" and the same vide order dated 09.08.2010 was dismissed with liberty to the petitioners to avail legal remedy in case they feel that their counsel was negligent in prosecuting the case.

4. He further submits that in this respect application enclosing the copy of the proof of co-ownership/co-sharer, of the land described above, had been submitted but the Executing Court dismissed the aforementioned application by relying upon the ratio decidendi culled out in the judgment of Hon"ble Supreme Court in Hukam Chand v. State of Haryana, 1996 (3) RCR (Civil) 381.

5. He submits that ratio decidendi in the aforementioned judgment would not apply to the facts and circumstances of the present case as the controversy involved in the matter was/is with regard to identical/similarly situated persons, who had not sought the reference, whether they could be competent to move the application under Section 28-A(1) of the Land Acquisition Act or not. In this regard, he has relied upon the ratio decidendi culled out in the judgment of this Court in Furkan Ali's case (supra), wherein this Court while discussing the controversy involved, particularly, the status of a co-sharer who had not availed the remedy of enhancement can take the benefit i.e. the benefit granted by the higher Court would enure to the other co-sharers. The aforementioned judgment had been rendered by taking into consideration the judgment rendered by this Court in Patiala Improvement Trust, Patiala v. Amar Singh and others, 2005(2) RCR (Civil) 332 which has been rendered by taking into consideration the ratio decidendi culled out in the judgment of Hon"ble Supreme Court in A. Viswanatha Pillai v. Special Tehsildar for Land Acquisition, 1991 (4) SCC 17, thus, urges this Court for setting aside of the order under challenge.

6. There is no representation on behalf of the respondents, neither on the last date of hearing on 08.07.2016 nor today.

7. I have heard learned counsel for the petitioner and appraised the paper book. The following question of law arise for adjudication in the revision petition before this Court:-

(i) Whether the co-sharer/co-owner/co-parcener, if dissatisfied, with the award passed by the Collector, would be entitled to higher compensation, having not availed the remedy under Section 18 of the Land Acquisition Act, 1894, in view of the ratio decidendi culled out by the Hon"ble Supreme Court in A. Viswanatha Pillai's case?

(ii) Whether the person who had accepted the compensation under Section 31 of 1894 Act without protest and did not make the application under Section 18,

would be entitled to maintain petition under Section 28-A (1) of the Act within three months from the date of Award made by the Reference Court or not?

8. For adjudication of the aforementioned questions, it would be apt to refer the findings rendered by Hon''ble Supreme Court in Hukam Chand's case (supra). In the aforementioned case, the matter involved was that a notification under Section 4(1) of the Land Acquisition Act, 1894 was published on 24.03.1971. The Collector had pronounced the Award on 10.07.1971. Few of the land owners along with others, had sought the reference under Section 18 of the Act and after enhancement of the Award under Section 26, the matter was not carried in appeal to the High Court under Section 54 of the Act. However, some other claimants/land owners availed the remedy under Section 54 whereby the compensation was enhanced and subsequently, after two years, the land owners who did not avail the remedy of appeal under Section 54, filed the application under Section 28-A which was dismissed and had been upheld by Hon''ble Supreme Court by holding that the aggrieved person who have received the compensation without protest but did not avail the remedy of reference under Section 18, in case one of the claimants had got the benefit of the enhancement of the compensation, whether the other claimants/applicants would be entitled to seek the compensation under Section 28-A of the 1894 Act and the answer was that they would not be.

9. However, in A. Viswanatha Pillai's case (supra), the question that came to be debated/pondered upon was in respect of status of a cosharer/co-owner/coparcener wherein the Hon''ble Supreme Court after relying upon the various other judgments, in paragraph 2 held as under:-

".....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 ? 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."

10. In the instance case, the petitioners, admittedly, are the coowners of the khasra number referred to above. The judgments relied upon by Mr. Yadav were

also brought to the notice of the Executing Court but the Executing Court in the penultimate paragraph, dismissed the application by relying upon the ratio decidendi culled out in Hukam Chand's case (supra).

11. I am of the view that in Hukam Chand's case (supra), the question with regard to claim of co-owner/co-parcener/co-sharer was not kept in mind, much less, adjudicated upon. It was only with regard to the similar land-owners, who had not availed the remedy of appeal under Section 54 of the 1894 Act but wanted to take the benefit by resort to provisions of Section 28-A(1) of the 1894 Act on the basis of enhanced compensation awarded in the appeal filed by the other similarly situated persons and therefore, the said judgment, in my view, would be per incuriam. The instant case is also of such nature whereby the applicants have been denied the benefit of the enhanced compensation rendered in favour of few of the co-owners i.e. Ronki Ram and others, having joint khata.

12. In my view, the petitioners are entitled to same benefit as other co-sharers have already been given. Accordingly, the impugned order under challenge is hereby set aside and the revision petition stands allowed.