
(1989) 11 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 389 of 1976

Ram Dayal and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 3, Order 6 Rule 17, 149, 151

Land Acquisition Act, 1894 — Section 23

Citation : (1990) 2 ILR (P&H) 450 : (1990) 97 PLR 27

Hon'ble Judges : K.P. Bhandari, J;J.V. Gupta, J

Bench : Division Bench

Advocate : M.S. Jain and Sarita Gupta, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—Regular First Appeal No. 389 of 1976, arising out of the land acquisition proceedings, was decided by this Court on April 27, 1979. Now, C. M. No. 1762-CI of 1989 has been filed by the appellants for permission to amend the memorandum of appeal to claim Rs. 2,50,000/- as enhanced amount of compensation instead of Rs. 1,00,000/-. They have also prayed to allow them to pay the additional amount of Court-fee and accordingly, the judgment dated April 27, 1979 be recalled and modified to allow the appellants to get the actual amount of compensation payable to them.

2. Admittedly, the application has been filed after more than 10 years of the decision of the appeal by this Court. The said matter has become final between the parties and, therefore, could not be re opened after more than ten years by permitting the appellants to amend the memorandum of appeal to claim enhanced amount of compensation now, The learned counsel for the appellants referred to the Supreme Court judgment in Nand Ram v. The State of Haryana 1988 P.L. J. 505. to contend that such a relief could be granted by this Court. He

also cited the judgment of the learned Single Judge in C. M No. 1740-CI of 1985 in Regular First Appeal No. 843 of 1981, decided on April 4, 1989, in which relying upon the said Supreme Court judgment, the application was allowed. Earlier, the Full Bench of this Court in Banta Singh v. Union of India 1988 P. L. R. 440. held that the appellate Court may permit the appellant to amend the relief asked for in Court below as also in appeal when appeal is pending. Once the appeal is disposed of, that jurisdiction is lost and that, therefore, it was not possible for the claimants to ask for amendment of the grounds so as to increase the claim for disposal of appeal. According to the learned counsel, in view of the subsequent Supreme Court judgment in Nand Ram's case (supra), the judgment of the Full Bench of this Court in Banta Singh's case (supra), is no longer a good law,

3. After hearing the learned counsel, we are of the considered opinion that it could not be successfully argued that the above said Supreme Court judgment has in any way overruled the afore-mentioned Full Bench judgment of this Court.

4. The Supreme Court in Nand Ram's case (supra) while granting special leave, allowed the appeal and granted certain relief therein whereas this Court is not sitting in appeal at this stage and, therefore, the question of granting" any relief as claimed, does not arise. Moreover, is the Full Bench judgment of this Court, this aspect was considered and it was observed that,-

"As we have already pointed out, if we have been sitting in appeal over the decision of the Division Bench, we could follow the Supreme Court judgment above referred and granted the relief prayed for by permitting the amendment of the grounds and modifying the decree of the Bench and awarding enhanced compensation subject to payment of Court-fee. Neither an appeal lies against the Bench judgment before us, nor as already stated, a review application is possible under Order 47 of the Code of Civil Procedure. This cannot also be treated a clerical or arithmetical mistake because the learned Judges definitely stated that their reliefs shall be with reference to the claims in the appeals and it could not be more than what they have asked for in the appeal. If the applicants were aggrieved by that direction, they should have preferred an appeal as has been done in the decision reported in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, . Therefore, we are unable to agree that we can invoke the principles enunciated in the judgment of the Supreme Court and grant the relief in this case."

5. As regards the Single Bench judgment, the benefit was being claimed under the amending Act and it has nothing to do with the facts of the present case where amendment is sought of the memorandum of appeal after 10 years. Moreover, before the learned Single Judge, the State never opposed the application, as it was observed that, "the application is not being opposed seriously." In any case, it was wrong to say that the above-said judgment of the Supreme Court overruled the Full Bench judgment as observed by the learned Single Judge.

6. Reference may also be made to the Division Bench judgment of this Court in C. M. No-2001-CI of 1987 in R.F.A. No. 2671 of 1981, decided on September 19, 1988, wherein similar matter was considered and reliance was placed on the Full Bench judgment of this Court in Banta Singh's case (supra).

7. Viewed from any angle, the application is not maintainable and that too after ten years and is, thus, liable to be dismissed in limine.