

(1992) 08 P&H CK 0106
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3675 of 1985

Sardar Gurdial Singh

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 31-08-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 28A
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 18

Citation : (1993) 103 PLR 78

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : H.S. Gill, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—This order of mine will dispose of Civil Revision Nos. 3675, 3680 and 3681 of 1985.

2. All these revision petitions arise out of order dated 5-9-1985 passed by the Additional District Judge, Ambala, dismissing the execution application of the petitioners.

3. Briefly, the facts are that Union of India requisitioned 85.5 acres of land in the year 1966. This very land was acquired under the provisions of Requisitioning and Acquisition of Immovable Property Act, 1952, (briefly "the Act"). The acquired land included land measuring 123 kanls 8 marlas which was jointly owned by Gurdial Singh petitioner, Jai Singh, Joginder Singh etc., Sawan Singh and Durgi. On an application made by Sawan Singh and Durgi, Sh. N. K. Jain, Additional District Judge, Ambala was appointed as Arbitrator, who gave his award on 24-11-1981. His award was challenged by Sawan Singh and Durgi by filing an appeal in this Court, the number of appeal being FAO No. 167 of 1982. The said appeal was decided by this court on 18-11-1983. The compensation

payable to the appellants there in was enhanced. As far as the petitioners are concerned, they entered into an agreement with Military Land Acquisition Officer on behalf of Government of India in form "K" and with regard to amount of compensation, the petitioners having given their consent to accept the said offer, received the amount of compensation. After the decision of F. A. O. No. 167 of 1982, the petitioners filed execution applications before the Additional District Judge in which it was claimed that they are also entitled to enhanced compensation as awarded to the appellants in F. A. O. No. 67 of 1982. The Additional District Judge dismissed the said execution applications being not maintainable. The executing Court also found that once the petitioners had accepted the offer made by Union of India and had executed the agreement in form "K" as provided under the Act, they are bound by the said acceptance and would not be entitled to claim enhanced compensation under Sections 8 and 11 of the Act. These orders are being impugned in the present revision petition.

4. Mr. H. S. Gill, Advocate counsel for the petitioners contended that the compensation was enhanced by the High Court on a reference made by the co-owners and therefore, the reference must be deemed to have been made on behalf of all the co-owners, and thus, the petitioners are also entitled to share enhancement. For this, he relied upon two judgments of this Court, (i) Ch. Kehar Singh and Another Vs. Union of India (UOI) and Another, , and (ii) Bhag Singh and Ors. v. Special Land Acquisition Collector and Anr. (1984) 86 P. L. R. 568, I am afraid to accept this contention for the simple reason that in (i) Ch Kehar Singh's case (supra) and (ii) Bhag Singh's case (supra) the property acquired was joint and the co-owners had no distinct and specified shares therein, and then reference made u/s 18 of the Act by one of the co-owners for enhancement of compensation by the Collector was held to ensure for the benefit of other co-owners as well. In such a case, it was held that the co-owner who is wanting enhancement in the compensation was acting on behalf of other co-owners because their interest was joint and indivisible. However, this is not the position in these cases, in the present cases, the petitioners themselves have stated that they had specified share, i.e. 1/8th share each in the acquired land measuring 123 kanals 8 marls. Once the shares of the petitioners are specified, the other co-owners cannot be said to be acting on their behalf. Otherwise also, the execution applications were not maintainable because the scope of the execution court is limited only to the extent of executing the decrees or orders of the court. As far as the petitioners are concerned, there is no order or decree in their favour which could be executed by the execution court. It is well settled that the Executing Court is to execute a decree and order as it is and cannot go beyond the same. In these cases, there being no order or decree in favour of the petitioners, there was nothing for the executing Court to execute a decree or order.

5. Faced with this situation, Mr. Gill contended that the petitioners who were the owners of land acquired under the Act, are entitled to claim and receive the same benefits as are available under the Land Acquisition Act 1894 (in short "the 1894 Act") further contended that in the absence of any analogous in the Act,

corresponding to the one contained in Section 28A of the 1894 Act, the provisions of the same can be taken resort to for redetermination and payment of compensation. It is true that the land-owner whose land was acquired under the Act, cannot be denied the benefits as are available to the owners of land acquired under the 1894 Act. It has been held by a Full Bench of this Court in Hari Krishan Khosla and Ors. v. The Union of India (1974) 76 P. L. R. 658 that provisions of the Act so far as they deny the benefits which are made available to the landowners in case of acquisition of land under the 1894 Act, are violative of the rule of equality enshrined in Article 14 of the Constitution of India. D. V. Sehgal, J, (as his lordship there was) in Jasmeel Kaur and Ors. v. The Union of India 1987 P. L. J. 655, while considering the provisions of the Act as well as the provisions of Section 28A of the 1894 Act relied on the Full Bench decision of this Court in Hari Krishan Khosla's case (supra) and held that the provisions of Section 28A of the 1894 Act also apply to those landowners who do not make application u/s 18 of the Act. The petitioners however, in these cases have not resorted to the provisions of Section 28A of 1894 Act. The executing Court had no jurisdiction to determine compensation u/s 28A of the 1894 Act as the jurisdiction for this purpose lies only with the Collector. In case, the petitioners are so advised, they may make reference to the Collector in the light of judgment of this Court in Hari Krishan Khosla's case (supra) and Jasmeel Kaur's case (supra) who shall decide the same in accordance with law. Mr. Gill also - Contended that the Collector may not entertain these petitions because of delay. This apprehension is absolutely misconceived because it shall always be open to the petitioners to explain the delay, if any, to the satisfaction of the Collector.

6. For the reasons recorded above, all the revision petitions are dismissed with no order as to costs.