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(2014) 07 P&H CK 0758

In the Punjab And Haryana At Chandigarh

Case No : CR No. 3286 of 2001 (O&M)

State of Haryana APPELLANT

Vs

Pushpa Rani RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 28-A, 4

Citation : (2014) 07 P&H CK 0758

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Kulvir Narwal, AAG, Advocate for the Appellant; M.L. Sharma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This revision petition is directed against the order dated 31.10.2000 passed by the learned Executing Court by which execution application filed by respondents No. 1 and 2 has been maintained.

2. The brief facts of the case are that vide notification issued u/s 4 of the Land Acquisition Act, 1894 dated 21.07.1993 an area of 11 kanals 4 marlas comprised in khasra No. 182//2/2 (2-13), 182/9(8-11), situated at Basti Bhima at Fatehabad was acquired. The Land Acquisition Collector awarded Rs. 3 lacs per acre in all including all benefits etc. Vide award No. 1 dated 8.7.1996. The other co-sharers namely Sunil Kumar, Dev Raj, Jitender and Rajiv Kumar filed a reference as contemplated u/s 18 of Land Acquisition Act, 1894 for the purpose of enhancement of compensation before the Civil Court in which market value of the acquired land was assessed at the rate of Rs. 10 lac per acre equivalent to Rs. 206/- per square yard besides the statutory benefits. Petitioners herein are the co-sharers to the extent of 16 marlas of land in equal share in khewat of 11 kanals 4 marlas, which was acquired. Sunil Kumar, Dev Raj, Jitender and Rajiv Kumar, filed an application for execution bearing LA No. 383 of 1997 claiming the compensation awarded by the Court. The respondents also filed application for

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the same compensation but their application was contested by the petitioners herein on the ground that it is not maintainable as it has been filed in the execution of a co-sharer. It was stated by the petitioners herein that until and unless respondents No. 1 and 2, who are applicants in the execution had preferred their own objection u/s 18 the compensation awarded in favour of the other co-sharers cannot be granted. This revision petition was ultimately admitted on 10.12.2004 and interim order regarding stay of implementation of the impugned award was ordered to be continued vide order dated 22.10.2010. The revision petition, however, was ordered to be heard within six months. Thereafter, this case has been listed by the Registry as service upon respondent No. 1 was found to be incomplete. The respondent No. 1 has not been served as she is not found residing at the given address.

3. On request of learned counsel appearing on behalf of respondent No. 2 the main revision petition, which was ordered to be heard within six months vide order dated 10.12.2004, is taken on Board for regular hearing as the issue involved in this case is with regard to payment of compensation to the owner whose land was acquired as far back as in the year 1993.

4. With the consent of both the parties, the main revision petition is taken on Board and arguments are heard.

5. Learned counsel for the petitioner submits that in this case, the co-sharer, who has not been filed reference u/s 18, cannot claim compensation awarded to the other co-sharer. He has relied upon a judgment of the Apex Court in the case of Smt. Ambey Devi Vs. State of Bihar and another, decided by Bench of two Hon''ble Judges. It was held that an application filed u/s 18 of the Act would not be treated to have been filed on behalf of all the co-sharers. On the other hand, learned counsel for the respondent has argued that after the aforesaid decision the Supreme Court has delivered another judgment in the case The Jalandhar Improvement Trust Vs. The State of Punjab and Others, In the said case, the application u/s 28-A filed by the co-sharer was declined by the Tribunal on the ground of delay to contend that the co-sharer can maintain application for the same compensation which is awarded to the other co-sharer, who have filed objection u/s 18 of the Act.

6. Learned counsel for the respondent has also relied upon a decision of this Court Patiala Improvement Trust Vs. Amar Singh and Others, wherein it has been held that if the claimant has not filed any reference u/s 18 of the Act nor an application u/s 28-A, directions can be issued to pay compensation in the same manner as has been paid to the other co-sharers whose land was acquired with them.

7. Before coming to this conclusion, this Court has taken note of Jalandhar Improvement Trust''s case (supra) and various other judgments.

8. After hearing both the parties and examining the available record, I am of the considered opinion that the law laid down by this court, Patiala Improvement

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Trust Patiala (supra) following the later judgment of the Supreme Court in Jalandhar Improvement Trust''s case (supra) is to be followed. Accordingly, it is held that if the land of the co-sharer is acquired who has neither filed an objection u/s 18 and 28-A of the Act, the execution application still could be filed in the pending execution application or on the basis of the award of the other co-sharer for the purpose of getting the same compensation.

9. Accordingly, the present revision petition is dismissed.

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