

**(1993) 09 P&H CK 0141**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 2248 of 1992**

State of Haryana

APPELLANT

Vs

Rumal Singh

RESPONDENT

**Date of Decision :** 02-09-1993

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115  
Land Acquisition Act, 1894 — Section 18, 23

**Citation :** (1994) 106 PLR 169

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

**Bench :** Single Bench

**Advocate :** S.S. Khetarpal, AAG, for the Appellant; Ajay Lamba, for the Respondent

**Final Decision :** Allowed

## Judgement

V.K. Jhanji, J.—In this revision petition, State of Haryana is aggrieved of the order of the execution Court, whereby respondents No. 2 and 3, Ramesh Singh and Hari Singh have been held entitled to the enhanced compensation.

2. In brief, the facts, are that the State of Haryana acquired land situated in village Mawai in pursuance of notification dated 2.8.1973 issued u/s 4 of the Land Acquisition Act (briefly "the Act")- One Rumal Singh felt dissatisfied with the compensation awarded to him by the Land Acquisition Collector. He, therefore, applied to the Collector for making reference to the Court u/s 18 of the Act. On reference, compensation was enhanced. Respondents No. 2 and 3 also applied to the Collector for making reference u/s 18 of the Act. Their case was also referred to the Additional District Judge, Gurgaon, who vide order dated 3.5.1978 dismissed the claim petition. After the dismissal of their claim petitions and during the pendency of reference before the Additional District Judge in the case of Rumal Singh, respondent No. 2 and 3, Ramesh Singh and Hari Singh, made an application for being impleaded as parties on the ground of being co-shares. Their application was dismissed by the District Judge, Faridabad with the

finding that there was nothing on record to show that share of Ramesh Singh and Hari Singh had also been acquired by the State. The order dismissing the applications was not challenged by respondents No. 2 and 3. Having failed on these two fronts, respondents No. 2 and 3 filed execution applications, claiming compensation on the strength of the award passed in favour of Rumal Singh. According to them, though they were not parties to the award which was passed on the reference made by Rumal Singh, yet they being co-owners/co-sharers, are also entitled to the compensation as awarded by the District Judge in the case of Rumal Singh. The State contested the execution, raising various pleas including the one that execution is not maintainable because respondents No. 2 and 3 were not parties to the reference made by Rumal Singh. In reply, reference was also made to the petition filed by respondents No. 2 and 3 which was referred u/s 18 to the District Judge, Gurgaon, and also to the dismissal of the application for becoming parties in the reference petition filed by Rumal Singh, deceased. The executing Court held that if the contention of the respondent-State is accepted, that would amount to discrimination between the two-co-owners of the acquired land, one being paid compensation at enhanced price than the other. Law abhors discrimination." Consequently, respondents No. 2 and 3 were held entitled to enhanced compensation as awarded by the District Judge in his judgment dated 1.5.1976 passed on reference made by Rumal Singh. They were also held entitled to other statutory benefits such as solatium and interest etc., as awarded to Rumal Singh. This order is being challenged by the State in the present revision petition.

3. Learned State counsel appearing for the petitioner-Haryana State, contended that the executing Court had no jurisdiction to give benefit of the enhanced compensation to respondents No. 2 and 3 in execution proceedings. In reply, Mr. Ajai Lamba, counsel for respondents No. 2 and 3, vehemently contended that compensation was enhanced by the District Judge on a reference made by co-owner and, therefore, reference must be deemed to have been made on behalf of other co-owners and thus, respondents No. 2 and 3 are also entitled to the enhanced compensation. In support of this contention, he placed reliance upon judgments of this Court reported as Harmant Singh and Ors. v. Land Acquisition Collector, Gurgaon and Ors. (1987) 92 P.L.R. 188 and in Kamla Devi v. State of Haryana (1986) 89 P.L.R. 692.

4. Having heard the learned counsel for the parties at length, I am afraid to accept the contentions advanced by Mr. Ajai Lamba, counsel for respondents No. 2 and 3, for the simple reason that in Harmant Singh's case (supra), the property acquired was joint and co-owner had no distinct or specified share therein, 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 be enuring for the benefit of other Co-owners as well. In the facts and circumstances of that case, it was held that co-owner who is wanting enhancement in compensation was acting on behalf of other co-owners because they had joint interest in every fraction of its, howsoever microscopic and indivisible. However, this is not the position in the

present case. In this case, respondent No. 2 and 3 themselves have stated that they had a specified share, i.e. 1/6th share each in the acquired land measuring 20 kanals 4 marlas. Where share of the petitioner is specified, the other co-owner cannot be said to be acting on his behalf. Otherwise also, the execution applications were not maintainable because scope of the executing Court is limited only to the extent of executing the decree or orders of the Court. As far as respondents No. 2 and 3 are concerned, there is no order or award in their favour which could be executed by the executing Court. It is well settled that the executing Court is to execute the decree or order as it is. It cannot go beyond the same. In this case, there being no order or decree in favour of respondents No. 2 and 3, there was nothing for the executing Court to execute the decree.

5. Faced with this situation, Mr. Ajai Lamba, counsel for respondents No. 2 and 3, contended that the State must not discriminate between the co-owners. According to the counsel, all the co-owners would be entitled to claim and receive the same benefits as allowed to one co-owner. I am afraid to accept this contention as well. Respondents No. 2 and 3 feeling dissatisfied with the compensation awarded by the Land Acquisition Collector, made reference u/s 18 of the Act, to the Court. Their reference was dismissed vide order dated 3rd of May, 1978. Their petition was dismissed on the ground that they had failed to produce evidence despite the grant of several opportunities to them for that purpose. Respondents Nos. 2 and 3 failed to challenge the order dismissing their claim petition, in appeal. Their application for becoming parties to the reference made by Rurnal Singh, deceased, was also dismissed and that order too was not challenged by them. Respondents No. 2 and 3 having failed to avail of the remedies available to them under the law, cannot be allowed to urge that despite their failure in those proceedings, they are entitled to the enhanced compensation as awarded to Rurnal Singh. Mr. Lamba, counsel for respondents No. 2 and 3, cannot derive any help from a judgment of the Supreme Court rendered in Poonam Dhand v. Nand Gopal and Ors. J.T. 1991(3) 575 because in the facts and circumstances of that case, reference made by one co-owner was held to be on behalf of other co-owners as well. The claimants were held entitled to payment of enhanced award in the reference and not in execution as now being sought by respondents No. 2 and 3. I am not prepared to accept the contention of Mr. Lamba that the order dismissing the claim petition filed by respondents No. 2 and 3, was without jurisdiction, inasmuch as the Additional District Judge was required to answer the reference instead of dismissing the petition for want of evidence. The judgment rendered in Kamla Devi's case (supra) relied upon by Mr. Lamba, counsel for respondents No. 2 and 3, in support of this contention, has no application to the facts of the present case as in Kamla Devi's case (supra) the land acquisition reference was dismissed in default. The claimant who had made reference, died and his widow made a prayer for restoration of the reference, but it was declined on the ground that she had no right for restoration of the same after 3-1/2 years of dismissal of the reference. In these circumstances, J.V. Gupta, J, (as his Lordship then was)

relying upon the judgment in *Sham Shankar Sahair v. State of Bihar* 1914 B.L.J.R. 162 held that land acquisition reference cannot be dismissed in default for non-appearance of the claimant. It was also held that Court, on reference, is obliged to accept and determine the amount of compensation mentioned in the Collector's award as correct. Consequently, the reference was restored and the Court was directed to decide the same in accordance with law. In the present case, though the Additional District Judge while dismissing the reference did not determine the amount of compensation mentioned in the Collector's award as correct, yet respondents No. 2 and 3 cannot take advantage for this because their remedy, if any, was to challenge the order dismissing the reference. They having failed to avail of the remedy of appeal provided under the Act, cannot be allowed to contend that order was without jurisdiction and cannot be taken note of. The other judgments reported as *M.S. Ramaiah and Ors. v. Special Land Acquisition Officer*. AIR 1974 Kant 122 *Bhadar Munda and Another Vs. Dhuchua Oraon*, and *Abdul Karim and Another Vs. State of Madhya Pradesh*, , cited by Mr. Lamba, counsel for respondents No. 2 and 3, have no application to the facts to the present case because these judgments only lay down that reference cannot be dismissed in default or does not get barred for failure to bring on record the legal representatives of a deceased-claimant. Counsel also contended that the benefits can be made available to respondent No. 2 and 3 u/s 28A of the Act. This contention is also without any merit because respondents No. 2 and 3 never applied to the Collector u/s 28A of the Act. In this view of the matter, I am not going into the contention that in the case of respondents No. 2 and 3, provisions of Section 28A of the Act would not apply because they had sought reference u/s 18 of the Act. 6. For the reasons recorded above, this revision petition is allowed and in consequence thereof, execution applications stand dismissed with no order as to costs.