
(2010) 02 P&H CK 0291
In the Punjab And Haryana At Chandigarh

Surender Pal Singh Sethi

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 153, 153A
Land Acquisition Act, 1894 — Section 18, 30, 4, 6

Citation : (2010) 158 PLR 164 : (2010) 2 RCR(Civil) 556

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—This revision petition arises out of an order dated 26.10.2004 passed by Additional District Judge, Rewari on an application filed by the petitioner under Sections 151, 152, 153A of the Code of Civil Procedure, 1908 (for short "CPC") which has been dismissed.

2. Tersely, case of the petitioner is that vide notification No. LAC (G)-NTLA/96/434 dated 22.7.1996 issued u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") followed by a notification No. LAC(G)-NTLA/96/435 dated 23.7.1996 issued u/s 6 of the Act, land measuring 9.91 acres situated in the revenue estate of village Khaiwali and Kharkhara, Tehsil and District Rewari was acquired at public expense, for the public purpose, namely, for the development and utilization of land for providing approach road to industrial Plot Nos. 36, 37 and 38 of Industrial area, Dharuhera. The Land Acquisition Collector (for short "the Collector") assessed the market value of the acquired land @ Rs. 2,04,160/- per acre vide his award No. 5 dated 11.11.1997. Initially, the petitioner filed a Reference u/s 30 of the Act in respect of land comprised in Khewat No. 55/58, Rect. No. 6, Killa No. 3 min(3-0), 8/2 min (5-2) measuring 8 kanals 2 marlas situated in revenue estate of village Kharkhara, Tehsil and District Rewari which was referred by the Collector to the Civil Court vide LAC No. 34 of 1999 titled Surenderpal v. Prabhjot Singh which was decided in favour of the petitioner

Surender Pal vide order dated 27.5.2000. Thereafter, the petitioner filed a reference u/s 18 of the Act but inadvertently, referred his land as comprised in Khewat No. 395, Rect. No. 119, Killa No. 15/2min (1-16), 16min (3-9), 26min (1-19) measuring 7 kanals 4 marlas situated in village Khatawali, Tehsil and District Rewari instead of land mentioned in the reference u/s 30 of the Act, The learned Additional District Judge, Rewari decided a batch of eight cases including reference filed by the petitioner u/s 18 of the Act as LAC No. 20 of 2000 titled as Surender Pal Singh Sethi v. State of Haryana and Ors. and the main judgment was rendered in LAC No. 16/2000 titled as Ghisa Ram v. State of Haryana and Ors. whereby vide its award dated 10.9.2003 compensation of the acquired land was reassessed to the tune of Rs. 115/- per square yard besides awarding other statutory benefits in terms of the Amended Act. It is clarified by the learned Counsel for the petitioner that land inadvertently described by the petitioner in his Reference u/s 18 of the Act actually belongs to one M/s Mukta Enterprises who had also filed reference which culminated into LAC No. 24 of 31.7.2000 titled as M/s Mukta Enterprises v. State of Haryana and Ors. in which the aforesaid numbers of village Khatawali have been mentioned. It is also not disputed by the counsel for the State that amount of compensation arising out of acquisition of land measuring 7 kanals 4 marlas of village Khatawali belonging to M/s Mukta Enterprises has already been deposited. Thus, the fact remains that land measuring 8 kanals 2 marlas belonging to the petitioner situated within the revenue estate of village Kharkhara which inadvertently could not be mentioned in the reference filed u/s 18 of the Act, has been acquired by the State of Haryana without payment of compensation.

3. Now the question arises whether application under Sections 151, 152, 153, 153A of CPC which has been rejected by the Court below, could have been allowed. The learned Court below has dismissed the application solely on the ground that the petitioner wants to change the description of land which pertains to separate village. However, it is undisputed that land of both villages Khatawali and Kharkhara was acquired by the same notification dated 22.7.1996.

4. In order to appreciate the submissions made by the learned Counsel for the petitioner, a look at provisions of Sections 151, 152, 153 and 153A of CPC is necessary, which are reproduced as under:

Section 151:

Saving of inherent powers of Court - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.

Section 152:

Amendment of judgments, decrees or orders - Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion

or on the application of any of the parties.

Section 153

General power to amend - The Court may, at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

Section 153A

Power to amend decree or order where appeal is summarily dismissed - Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, u/s 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.

5. Section 151 CPC provides that nothing contained in the Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.

6. Section 152 CPC has been enacted to meet a contingency where there occurs a clerical or arithmetical mistake in the judgments, decrees or orders or errors arising therefrom by any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

7. Section 153 CPC empowers the Court with a power of amend any defect or error in any proceeding in a suit and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

8. In the present case, the following factors are undisputed, namely:

(i) Land of the petitioner has been acquired by a common notification dated 22.7.1996.

(ii) The petitioner has been held to be owner of the land in question in a separate proceedings in LAC No. 34 of 1999 whereby his application u/s 30 of the Act titled as Surender Pal v. Prabhjot Singh was allowed vide order dated 27.5.2000.

(iii) The petitioner has filed a reference petitioner, namely, LAC No. 20 dated 21.7.2000 titled as Surender Pal Singh Sethi v. State of Haryana in which compensation has been reassessed by the learned Reference Court to the tune of Rs. 115/- per square yard.

9. The only difficulty, which is being faced by the petitioner is that due to fault of the learned Counsel appearing on his behalf in the Court below, the land has

been wrongly described in the reference petition as same counsel was dealing with the case of Mukta Enterprises whose land has been mentioned in the case of the petitioner as well. From the resume of the aforesaid facts, it appears that the error committed is bonafide and for that purpose, provisions of Sections 151, 152, 153 can always be invoked by the Court below for removing the difficulty, which has arisen in the process of granting compensation to the rightful owner. There is no denial of the fact by the State of Haryana that land is not acquired. It is also admitted that no compensation has been awarded to the petitioner for acquisition of the said land, which is being sought to be incorporated in the reference u/s 18 of the Act. In order to prevent the abuse of process of law and to secure the ends of justice, learned Court below should have allowed amendment in the description of the property which has been acquired so that rightful owner should get his dues from the Government because the land has been taken away by the Government against his wishes for which he should not be deprived of compensation at mere technicalities. Thus, the present revision petition is allowed and the impugned order is set aside. It is directed that the relevant amendment may be made in the judgment and decree passed in LAC No. 20 of 2000 titled as Surender Pal v. State of Haryana in respect of the description of land which is already subject matter of LAC No. 34 of 1999 in which the petitioner has been held to be its owner and accordingly, compensation should be awarded to the petitioner.