

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4362 of 2013 (O&M)
Decided on:-January 23, 2015.

Chhittar @ Chhitru (died) through LRs and anotherPetitioners.

Versus

State of Haryana and othersRespondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. M.L. Sharma, Advocate
for LRs of petitioner No.1.

Petition qua petitioner No.2 dismissed as withdrawn.

Mr. Kuldeep Tiwari, Additional Advocate General, Haryana
for respondents No.1 and 2.

Mr. Amit Jhanji, Advocate
for respondent No.3.

Dr. Bharat Bhushan Parsoon, J.

Petitioner No.1 Chhittar @ Chhitru (now deceased and being represented by his legal heirs) alongwith Tikhu, petitioner No.2, were the owners of land measuring 25 Bighas 19 Biswas in equal shares. Vijay Kumar Dhawan, now respondent No.3, entered into an agreement with them to purchase land measuring 12 Bighas 10 Biswas out of this land.

2. Notification for acquisition of the said land under Section 4 of the Land Acquisition Act, 1894 (hereinafter mentioned as the Act) was issued on 4.5.1995, followed by the notification under Section 6 of the Act on 2.5.1996. The land was acquired by the Government for the purpose of

setting up of Sectors 22 and 23, Panchkula. Award No.7 was announced on 11.3.1998. The compensation was assessed @ Rs.2,70,000/- per acre at a uniform rate. After the announcement of the Award, both the petitioners preferred their separate petitions under Section 18 of the Act for enhancement of the compensation of the acquired land. Respondent No.3 Vijay Kumar also preferred the petition under Section 18 read with Section 30 of the Act for the release of enhanced compensation of the acquired land. The land references of the acquired land of the entire village were consolidated in the case of “Tirlochan Singh Versus State”.

3. During the pendency of the said petitions, the parties in this litigation compromised the matter by way of mutual settlement. Statements of the parties were also recorded. As mentioned earlier, the petitioners had challenged the Award. The Regular First Appeals came up for hearing before this Court. In the appellate proceedings, this Court remanded the matters to the reference court for a fresh decision.

4. On remand, receiving the land references, after remand, the reference court again consolidated the cases in the case titled “Tirlochan Singh Versus State” and after receiving evidence from the parties and providing a hearing to their counsel, market value of the land was determined @ Rs.462/- per square yard. Again against this Award, appeals were preferred by the petitioners.

5. The petitioners preferred the execution petitions for recovery of the amount of compensation. As the claim of respondent No.3 Vijay Kumar has been adjudicated in terms of mutually agreed settlement, he also claimed the compensation of land measuring 12 Bighas 10 Biswas. Deciding the application moved by applicant Vijay Kumar, it was found by the Executing Court that he had already received compensation in terms of the settlement arrived at between the parties, vide impugned order, it was further held that

sequelly, he was also entitled for the enhanced compensation. It is this order of 21.5.2013 of the Executing Court which is under challenge in this revision petition.

6. During the pendency of this petition, petitioner No.2 withdrew his revision petition, which then was dismissed as withdrawn on 8.1.2015.

7. Main challenge of the decree-holder i.e. petitioner No.1 is that the applicant/respondent No.3 herein, had only agreement to sell in his favour and since no title had been transferred to him, he was not entitled to any compensation. It is also claimed that the reference filed by the respondent No.3 under Sections 18 and 30 of the Act was not decided but even then, vide the impugned order, he has been held entitled to receive the compensation. It is also averred that neither the agreement to sell was genuine nor the compromise arrived at between the parties was legally tenable in terms of Order XXIII of the Civil Procedure Code.

8. Rebutting these arguments, counsel for respondents No.1 and 2 has urged that compensation in terms of adjudication made by the Appellate Court was paid to the decree-holders and since the settlement was arrived at between the parties and had been recognized by the courts concerned, the compensation was disbursed in terms thereof to the respondents including respondent No.3.

9. Counsel for respondent No.3 has urged that once the settlement was legally arrived at between the parties and was acted upon as also was adhered to, there cannot be any backing out from the same by the petitioners. It is claimed that when they had already received compensation with respect to land measuring 12 Bighas 10 Biswas, any enhanced compensation ordered thereafter cannot be with-held by the decree-holders in view of the settlement between the parties which has never been questioned earlier by

the petitioners herein.

10. Perusal of the paper book reveals that the entire problem arose because all the three references i.e. one moved by Chhitru etc. (LAC No.170 of 2000-2005), by Tikhu (LAC No.71 of 2001) and by Vijay Kumar Dhawan, respondent No.3 (LAC No.63 of 2001) had been clubbed together with the main file titled “Tirlochan Singh Vs. State”. Total references were clubbed together. Pursuant to the Award dated 31.1.2012, compensation as already mentioned, was determined @ Rs.462/- per square yard alongwith statutory benefits. Respondent No.3 had also moved an application under Section 114 read with Order 47 Rule 1 as also under Section 151 CPC for review of order dated 31.1.2012 and had sought revival of his execution petition for taking up his objections for decision which had wrongly been placed in the other execution petition titled “Chhitru and Tikhu Versus State” which was bearing LAC No.71 of 2001 and request had been made for deciding the objections of the objector in execution of LAC No.63 of 2001.

11. The Executing Court took great pains and summoned all the files from the record room. No doubt, after agreement to sell qua land measuring 12 Bighas 10 Biswas, out of total land of 25 Bighas 19 Biswas, no sale deed was registered in favour of applicant/objector, respondent No.3 herein, but it remains a fact that he was confident person of original land holders Chhitru and Tikhu and they had also executed a general power of attorney in his favour.

12. In the main case titled “Tirlochan Singh Versus State” wherein all other references including the present three were consolidated, on 25.9.2003 statements of both the decree holders viz. Chhitru and Tikhu were recorded. Statement of the applicant/objector was also recorded therein. In addition to making of statements, Chhitru and Tikhu had also filed affidavits to the effect that both of them who in fact were real brothers had paid the

share of compensation of land measuring 12 Bighas 10 Biswas to Vijay Kumar Dhawan, now respondent No.3.

13. Admitting his claim filed vide reference under Section 18 and 30 of the Act, they had also confirmed the execution of the compromise swearing on affidavit that the same had been executed voluntarily without any threat or coercion, and had thus bound themselves for the same.

14. When affidavits of both the brothers viz. Chhitru and Tikhu and statement of respondent No.3 herein dated 25.9.2003 are read together alongwith the compromise, there does not remain any dispute that by their mutually agreed settlement taking Vijay Kumar Dhawan, now respondent No.3, as a stakeholder, they had allowed payment of compensation to him. The said compromise recorded in LAC No.129 of 10.5.2001 is Annexure P-7, relevant portion whereof is reproduced as under:

“2. That the respondents No.2 and 3 relinquish their rights, title and interest in respect of the said land measuring 12 B – 10 B i.e. ½ share in above total land measuring 25 Bighas and only petitioner may be treated as entitled to the same for all purposes.

3. That the petitioner shall not claim any share in the unacquired shamlat share of the respondent Nos.2 and 3. And petitioner is entitled to only the aforesaid land measuring 12 B – 10 B from the share of the respondent Nos.2 and 3 in the present acquisition. This compromise shall be binding on the parties and shall be treated for all purposes i.e. for seeking enhancement, recovery of enhanced compensation, filing of appeal, review, revision SLP or any other proceedings and their execution and for all legal purposes.” (emphasis by underlining has been added)

15. Respondents No.2 and 3 therein were Chhitru and Tikhu whereas petitioner was Vijay Kumar Dhawan, respondent No.3 herein.

16. On the basis of this compromise on 25.9.2003 in main case “Tirlochan Singh Versus State”, fact of compromise between the parties and making of statements by them was duly recorded. Relevant portion of said order of the Executing Court for ready reference is reproduced as below:

“In reference LAC No.129 of 2001, there has been a compromise between the parties which is a reference under Section 18/30 of the Land Acquisition Act. The statement of Chhitru and Tikhu recorded and certain documents have also been produced on the file by them.”

17. Even during the course of arguments, in this revision petition before this Court, it could not be denied by the counsel for the petitioner No.1 that compensation in terms of this compromise was duly paid to respondent No.3. Assertion of learned counsel for the contesting petitioner that no separate order was passed while deciding the main case with all other consolidated references on 24.12.2005 is factually correct. But once the matter stood settled and had duly been taken into consideration by the court concerned, which had recorded their statements and had also taken compromise as well as affidavits of the parties on record, there does not remain any dispute about enforceability of the said compromise. Rather, language of the affidavits furnished by the decree holders leaves no manner of doubt that the compromise was acted upon by the parties.

18. Form D (Annexure P-22) at Serial No.13 has an entry in favour of respondent No.3 regarding payment of compensation for the acquired land.

19. It also remains a fact that in appeal preferred before this Court by the decree-holders on remand of the references vide Award dated 31.1.2012, the amount of compensation was enhanced to Rs.462/- per square yard. The simple question now requiring determination is as to whether respondent No.3 who had earlier received compensation as ordered by the

reference court in terms of settlement dated 25.9.2003, was entitled to enhanced compensation granted vide Award dated 31.1.2012 or not?

20. When compensation in terms of the compromise was paid and it was also agreed among the parties that this compromise would enure even for payment of the enhanced compensation as is recited in para 3 of the compromise as appended earlier, in fact there is no question mark that in terms of the said compromise, the respondent No.3 is entitled even to enhanced compensation. Validity and legality of compromise dated 25.9.2003 had never been challenged earlier; rather, it was accepted, acted upon and the compensation was duly paid to respondent No.3.

21. The Executing Court in the impugned order has rightly come to the conclusion that even if at the time of pronouncement of the Award on 25.9.2003 in all the references, the reference court has not made any specific order with regard to reference petition of applicant-respondent No.3 and there is also no separate order in adjudication made vide Award of 30.1.2012 after remand of the Regular First Appeals by this Court to the court below, the petitioner No.1 cannot be allowed to wriggle out of the compromise (Annexure P-7) duly acted upon vide which not only he and his brother had authorised payment of compensation of land measuring 12 Bighas 10 Biswas to the share of respondent No.3, but had also filed their affidavits and had made their statements in the court manifesting their volitional consent and had also specifically mentioned in the compromise that the same would enure even for the enhanced compensation. Respondent No.3 cannot be deprived of his share of compensation in respect of 12 Bighas 10 Biswas of land out of the compensation enhanced in terms of Award Dated 31.1.2012 or even thereafter in Regular First Appeals.

22. Keeping in view the totality of facts and circumstances as discussed earlier, no ground is made out to interfere with the impugned order

dated 21.5.2013 (Annexure P-28) which is found to be correct on facts as also in law and has no infirmity. Sequelly, affirming the impugned order, this petition, being devoid of any merit, is dismissed.

(Dr. Bharat Bhushan Parsoon)
Judge

January 23, 2015

'Yag Dutt'

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes