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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 17.08.2015

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CM(M) 132/2012

RAJ SINGH DECD THR LRS

..... Petitioner

Through: Mr. I.S. Dahiya & Mr. Shiv Kumar,
Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Sanjay Kumar Pathak, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. This petition under Article 227 of the Constitution of India seeks to assail the order dated 02.06.2011 passed by the Executing Court, namely the Additional District Judge – 01, Rohini Courts, Delhi in Execution No. 48/2008.

2. The land of the decree holder, i.e. the petitioner herein was acquired and the Land Acquisition Collector passed an Award No.35/81/82 on 10.01.1981. The petitioner/ decree holder then filed a reference for enhancement of compensation. The learned ADJ vide judgment dated 15.10.1984 enhanced the compensation by assessing the market value @ Rs.2,500/- for category 'A', Rs.2,000/- for category 'B' and Rs.1,600/- for category 'C' lands.

3. The said judgment of the Reference Court was further carried in

appeal before this Court in RFA 84/85. A Division Bench of this Court enhanced the market value as Rs.7,000/- per Bigha. It was, inter alia, held that the decree holder would be entitled to additional amount under Section 23(1A) subject to constitution bench judgment of the Supreme Court which was then awaited. In C.M. No.939/1988, the decree was amended vide order dated 11.01.1989, and the petitioner was granted 30% solatium and interest @ 9% for the first year, and 15% thereafter, till payment of enhanced compensation and additional amount under Section 23(1A) @ 12% p.a.

4. To execute the said decree, the decree holder filed the execution petition. However, the same was adjourned sine die on 22.05.2000 on the request of the decree holder, who stated that the matter involved in the present execution is pending before this Court.

5. The decree holder sought revival of the execution petition vide application dated 18.03.2002 on the premise that now the question of entitlement of additional amount of 12% under Section 23(1A) has been decided by the Supreme Court and, thus, decree holder was entitled to additional amount, and further benefits, as per the amended Land Acquisition Act. The decree holder also sought interest on solatium in terms of the judgment of the Supreme Court in *Sunder Vs. Union of India*, DLT 93 (2001) 569.

6. The petitioner laid its claim on the premise that the judgment of this Court in RFA No.84/85 of the petitioner/appellant rendered on 11.01.1989- whereby the petitioner was held entitled to additional amount under Section

23(1A) @ 12% per annum had attained finality, and was never challenged.

7. On the other hand, the respondent sought to place reliance on the judgment of the Supreme Court in ***K.S. Paripoornan Vs. State of Kerala & Ors.***, (1994) 5 SCC 593, to submit that the decree, to the extent it granted additional amount under section 23(1A) was a nullity, on account of the fact that the award in question was rendered on 11.11.1981, i.e. before the cut off date when the amendment in the Land Acquisition Act was brought into effect on 30.04.1982. The submission was that the Executing Court would not execute a decree, if it is found to be a nullity. The learned ADJ/ Executing Court accepted the submission of the respondent/ judgment debtor, and consequently, denied the benefit of additional amount under Section 23(1A) to the petitioner. While doing so, the Executing Court placed reliance on ***Sarup Singh & Anr. vs Union of India & Anr.***, 2010 XII AD SC (99). Reliance was also placed on the judgment of this Court in ***Union of India Vs. Satish Kumar***, C.M.(Main) No.1394/2009 dated 07.04.2010, whereby this Court had set aside the order of the Executing Court directing the Union of India to make payment of the additional amount under Section 23(1A), on the premise that the date of the award in that case was prior to 30.04.1982.

8. The submission of learned counsel for the petitioner is that since the judgment dated 11.01.1989 had attained finality *inter-partes*, the respondent was bound by the same and the subsequent pronouncement of the Supreme Court in ***K.S. Paripoornan*** (supra) could not have effected the decree passed in favour of the petitioner.

9. On the other hand, the submission of learned counsel for the respondent is that the subsequent judgment of the Supreme Court in **K.S. Paripoornan** (supra) merely declared the law as it existed at all relevant times. The said decision was not made applicable only prospectively. Thus, the grant of additional amount under Section 23(1A) in favour of the petitioner, in the first place, was without jurisdiction, and consequently, a nullity.

10. Having heard learned counsel, I am of the view that there is no merit in this petition and there is no jurisdictional error in the order passed by the learned Executing Court. The issue raised by the petitioner was squarely considered by the Supreme Court in **Sarup Singh** (supra). The Executing Court has extracted the relevant paragraphs from the said decision, which read as follow:

“17.The applicability of the Amendment Act to a proceedings of the aforesaid nature was made clear by the Act of 18 of 1984 by enacting the provisions of Section 30(2). In all the appeals before us, the award of the Collector and that of the reference court in their case was passed prior to 30.04.1982. Therefore, the said amendment brought in by the Act of 18 of 1984 to the concerned provisions could not have been made applicable to the proceeding of the present cases. Hence, the judgment and order passed by the High Court giving the benefit provided by under the Amendment Act of 68 of 1984, viz., Section 23(1A) and 23(2) and the amended provision of Section 34 of the Act, cannot be made applicable in the cases of the appellants herein.

18.In so far as the second issue is concerned, it is true that the executing court cannot go behind the decree and grant interest not granted in the decree as submitted by the counsel appearing for the appellants in the light of the decision rendered by this Court in State of Punjab & Others v. Krishan Dayal Sharma

reported in AIR 1990 SC 2177.

19. But, if a decree is found to be nullity, the same could be challenged and interfered with at any subsequent stage, say, at the execution stage or even in a collateral proceeding. This is in view of the fact that if a particular Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction and the same is non-est and void ab initio.”

11. Merely because it may have dawned later that the decree obtained by the petitioner was partially a nullity, on account of a subsequent pronouncement of the Supreme Court, which declared the law vis-à-vis applicability of Section 23(1A), it does not mean that the Division Bench of this Court, while rendering the decision on 11.01.1989, had the jurisdiction to grant the additional amount under Section 23(1A) in favour of the petitioner. The grant of the said relief went to the root of the jurisdiction of the Court since Section 23(1A) could not have been invoked in respect of acquisition proceedings, where the award had been rendered prior to 30.04.1982, as in the present case. The Executing Court, as held by the Supreme Court in **Sarup Singh** (supra), was bound to take cognizance of the declaration of law made by the Supreme Court in **K.S. Paripoornan** (supra), since that part of the decree, whereby additional amount under Section 23(1A) had been granted, was a nullity.

12. Consequently, I find no merit in the present petition and dismiss the same leaving the parties to bear their respective costs.

VIPIN SANGHI, J

AUGUST 17, 2015

B.S. Rohella