

**RA-LP-27-2016 in
LPA-466-1990**

**Bathinda Improvement Trust
Versus
Ajinder Singh Mann & Ors.**

Present: Mr. RS Khosla, Senior Advocate with
Ms. Ishrat Phulka, Advocate for the review-applicants

Mr. Salil Sagar, Senior Advocate with
Mr. Samarth Sagar, Advocate and
Mr. Sankalp Sagar, Advocate for the appellant

This review application seeks to recall/modify the order dated 31.08.2016 whereby Letters Patent Appeals preferred by the Bathinda Improvement Trust were allowed and the order of learned Single Judge quashing the acquisition of land made for Development Scheme, has been set aside. In our detailed order, cases were divided into different groups for better appreciation of the points in issue. The case of the review-applicants fell in the second set of cases pertaining to 25.21 acres scheme. It is pointed out by Sh. Khosla learned senior counsel for the review-applicants that there are some factual mistakes on the face of the record and which have influenced our decision making process. In this context he has pointed out certain mistakes in the following paragraphs:-

“The next question is what relief should be granted?

Mr. Sagar, the learned senior counsel for the trust, submitted that all the land owners in the second set of cases have filed reference under Section 18 of the Act for seeking enhanced compensation. He further submitted that many of the land owners in the second set of cases had received the compensation also. This aspect submitted by Mr. Sagar appears to be factually correct. Apart from that, what we find is that the Scheme of the Trust related to the year 1984 and the

award was passed way back on 23.12.1988 and the execution of the Scheme has almost been completed.”

He explains that “all the landowners in the second set of cases” have not filed reference under Section 18 of the Act seeking enhanced compensation. He further points out that award in his case was not passed on 23.12.1988 rather it was passed on 17.02.1989. It is also explained that the writ petition challenging the acquisition was filed before passing of the award on 05.01.1989.

The other plea taken is that the *ratio decidendi* in **Nand Kishore Gupta and others vs. State of U.P. and others, (2010) 10 SCC 282** is not attracted in the instant case for the reason that unlike **Nand Kishore Gupta and others**, 25% of the land in 25.21 acre scheme is under litigation and *qua* that land Scheme has not been executed. If the land in dispute in the other cases is added, then almost 35% of the land can be taken under litigation.

The mistake *re*: the date of pronouncement of award is further pointed out in the paragraph dealing with the question of delay and laches.

Having given our thoughtful consideration to the submissions made on behalf of the review-applicants, we do not find any merit therein. Assuming that all the landowners in the second set of cases have not filed reference and only some of them resorted to such a recourse, such a fact-situation has no bearing on the ‘doctrine of utilitarianism’ which we have invoked in the instant case.

However, the date of award in the second set of cases, wherever, it is mentioned as 23.12.1988 shall be read as 17.02.1989.

The contention that the principles laid down in **Nand Kishore Gupta and others** case where a substantial part of the land under acquisition

of execution of the scheme *qua* the undisputed land is an admitted fact. The Trust was not expected to go ahead with the scheme in respect of the land which was under litigation, more-so when the learned Single Judge has quashed the acquisition and the matter was *sub judice* in appeal. It may be true that the land in dispute is toward extreme corner of the scheme conceptualized by the Trust but in view of the fact that rest of the Scheme stands implemented, we are satisfied that the ‘doctrine of utilitarianism’ invoked by us is fully attracted in the instant case.

For the reasons afore-stated, we do not find any merit in this application and the same is accordingly dismissed.

(Surya Kant)
Judge

07.10.2016
vishal shonkar

(A.B.Chaudhari)
Judge