

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.4843 of 2015

Date of Decision: 24.10.2017

Chanan Singh and another ...Petitioners

Versus

Union of India and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Amit Aggarwal, Advocate
for the petitioners.

Mr. Puneet Gupta, Sr. Panel Counsel
for Union of India.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 27.03.2014 passed by Additional District Judge, Bathinda whereby application under Section 151/152 CPC filed by the respondents was allowed which ultimately entailed in setting aside the order dated 17.04.2012 passed by Additional District Judge, Bathinda whereby petitioners were held entitled to an amount of Rs.1,58,681/- on account of compensation for their land which was acquired by the respondents.

[2]. The land measuring 22 bighas was acquired by the respondents by issuing notification under Section 4 of the Land Acquisition Act on 10.10.1974. The Land Acquisition Collector

announced the award on 11.06.1975.

[3]. Against the award, Reference Court decided the reference on 16.12.1980. Some of the land owners filed regular first appeal i.e. RFA No.754 of 1981, which was decided on 01.06.1984. Land Acquisition Act was amended by Act No.68 of 1984. The benefit of amended provision was made available under Section 30(2) of the Land Acquisition Act to those persons whose award passed by the Collector was between 30.04.1984 to 24.09.1984.

[4]. An application under Section 151/152 CPC was filed by the petitioners i.e. Civil Misc. No.42 dated 05.03.1986 which was allowed on 19.03.1987 and the petitioners were held entitled to benefits of amended act in terms of solatium and interest. Civil Revision No.2167 of 1987 was filed by the respondents, which was ultimately dismissed in default on 24.07.2002.

[5]. Vide order dated 17.04.2012, Reference Court held that the claimants are entitled to Rs.1,58,681/-. In execution, objections were filed by the judgment debtors. An application under Section 151/152 CPC was filed for recalling of the order dated 17.04,.2012 as the same was against the settled principles of law.

[6]. In **Union of India Vs. Swaran Singh, 1996(3) RCR**

(Civil) 670, it was held that the Amendment Act No.68 of 1984 was applicable on the pending proceedings before the Reference Court as on that date. The day on which the Act came into force on September 24, 1984, the claimants would be held entitled to the enhanced solatium and interest. It was held that the Reference Court or High Court has no power to entertain any application under Section 151/152 CPC to correct any decree which has become final or to independently pass an award enhancing the solatium and interest as amended by Act No.68 of 1984. Such a course was held to be a nullity. The order being a nullity can be challenged at any stage. In the said case, applications under Sections 151 and 152 CPC were filed in the High Court for award of enhanced solatium and interest under Section 23(2) and proviso to Section 28 of the Land Acquisition Act in view of amendment vide Act No.68 of 1984. High Court allowed the applications. In execution, the Executing Court dismissed the same, but in a revision, the High Court allowed the prayer and directed execution of enhanced solatium and interest. In Special Leave Petition, the Hon'ble Apex Court held that the award of solatium and interest would be granted on enhancement of compensation when the Court finds that the compensation was not correct. It is a part of the judgment and award. Hon'ble Apex Court held in the following manner:-

“7. It is settled law that after the reference Court has granted an award and decree under [Section 26\(1\)](#) of the Act which is an award and judgment under [Section 26\(2\)](#) of the Act or on appeal under [Section 54](#), the only remedy available to a party is to file an application for correction of clerical or arithmetical mistakes in the decree. The award of solatium and interest would be granted on enhancement of compensation when the court finds that the compensation was not correct. It is a part of the judgment or award. Admittedly, as on that date the claimants were entitled to solatium at 15% and interest at 6%. [The Amendment Act](#) 68 of 1984 came into force as on September 24, 1984. It is settled law that if the proceedings are pending before the reference Court as on that date, the claimants would be entitled to the enhanced solatium and interest. In view of the fact that the reference Court itself has answered the reference and enhanced the compensation as on December 24, 1981, the decree as on that date was correctly drawn and became final.

8. The question then is: whether the High Court has power to entertain independent applications under [Sections 151](#) and [152](#) and enhance solatium and interest as amended under Act 68 of 1984. This controversy is no longer res integra. [In State of Punjab vs. Jagir Singh & Ors.](#) [1995 Supp.(4) SCC 626] and also in catena of decisions following thereafter in [Union of India & Ors. vs. Pratap Kaur](#) (dead) through LRs. & Anr. [(1995) 3 SCC 263]; [State of Maharashtra vs. Maharau Srawan Hatkar](#) [JT](#) 1995 (2) SC 583]; [State of](#)

Punjab & Anr. vs. Babu Singh & Ors. [1995 Supp. (2) SCC 406]; Union of India s Anr. etc. vs. Raghubir Singh (Dead) by Lrs. etc. [(1989) 2 SCC 754]; and K.S. Paripoornan vs. State of Kerala & Ors. [(1994) 5 SCC 593] this Court has held that reference Court or High Court has no power or jurisdiction to entertain any applications under Sections 151 and 152 to correct any decree which has become final or to independently pass an award enhancing the solatium and interest as amended by Act 68 of 1984. Consequently, the award by the High Court granting enhanced solatium at 30% under Section 23 (2) and interest at the rate of 9% for one year from the date of taking possession and thereafter at the rate of 15 till date of deposit under Section 28 as amended under Act 68 of 1984 are clearly without jurisdiction and, therefore, a nullity. The order being a nullity, it can be challenged at any stage. Rightly the question was raised in execution. The executing Court allowed the petition and dismissed the execution petition. The High Court, therefore, was clearly in error in allowing the revision and setting aside the order of the executing Court.”

[7]. The ratio of Union of India Vs. Swaran Singh's case (*supra*) was further relied by the Hon'ble Apex Court in State of Haryana and another Vs. Kartar Singh (D) through LRs., 2013(1) RCR (Civil) 848 wherein it was held that any judgment or order which is a nullity never acquires finality. Plea of a decree being a nullity can be raised even before the Executing

Court. The Court also observed that in **Union of India Vs. Swaran Singh's case (supra)**, correctness of the decree passed by the High Court giving ex-perpetrated owners benefits of amended provisions of solatium and interest under Section 23(2) and proviso to Section 28 of the Land Acquisition Act as amended by the Amendment Act was in issue. In the above said case, it was held that High Court has no power to entertain any independent application under Section 151/152 CPC and enhance solatium and interest as amended under the Amendment Act. The Court also observed that in **Sarup Singh Vs. Union of India, 2011(2) RCR (Civil) 837**, it was held in the following manner:-

“25. In the present cases the judgment and order passed by the High Court before Amendment Act of 68 of 1984 became final and binding as no appeal was brought to this Court thereafter. However, consequent to the amendment in the Land Acquisition Act, the appellants had filed civil miscellaneous applications for the grant of 30% solatium and 9% interest for first year and 15% interest thereafter. This Court has also held in a catena of decisions that a decree once passed and which has become final and binding cannot be sought to be amended by filing petition under Sections 151 and 152, CPC.”

[8]. The legal position is no more *res integra* that an award and decree having become final under the Land Acquisition Act

cannot be amended or altered for enhancement of statutory benefits under the amended provisions by filing application under Section 151/152 CPC.

[9]. During course of arguments, it came to fore that the petitioners did not file any regular first appeal against the judgment of Reference Court dated 16.12.1980. The judgment dated 16.12.1980 passed by the Reference Court became final in case of the petitioners and therefore, the order dated 19.03.1987 passed by the Additional District Judge on the application under Section 151/152 CPC was a nullity and without jurisdiction. The consequent order dated 17.04.2012 and dismissal of Civil Revision No.2167 of 1987 in default would not change the legal position inasmuch as that the order dated 19.03.1987 passed by the Additional District Judge was a nullity as there was no proceedings pending at the time of commencement of the Act from 24.09.1984. The claim of the petitioners had already attained finality on 16.12.1980 itself as no regular first appeal was filed against the judgment of the Reference Court. Order dated 19.03.1987 being a nullity is hit by the ratio of **State of Haryana and another Vs. Kartar Singh (D) through LRs, case (supra)** as a plea of nullity can be raised even before the Executing Court. Precisely, this is the situation involved in the present case.

[10]. Having considered the controversy in the light of ratio as laid down by the Hon'ble Apex Court in **State of Haryana and another Vs. Kartar Singh (D) through LRs, case (supra)**, I am of the view that no indulgence can be granted in favour of the petitioners. This revision petition is accordingly dismissed.

24.10.2017	(RAJ MOHAN SINGH)
prince	JUDGE
Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No