

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

CR-6962-2014

Date of Decision:- 04.10.2017

Ajay Kikan and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashish Bansal, Advocate
for the petitioners.

Mr. D.K. Mittal, DAG, Haryana.

RITU BAHRI, J. (Oral)

Present petition has been filed under Article 227 of the Constitution for setting aside the impugned order dated 10.02.2014 (Annexure P-3), passed by learned Additional District Judge, Jhajjar, whereby the execution application filed by the petitioners has been dismissed.

Learned counsel for the petitioners submits that co-sharer is not required to file an application under Section 28-A of the Land Acquisition Act and can straight away apply for the execution of the said award.

In support of this arguments, he has placed reliance upon a judgment of this Court passed in case Patiala Improvement Trust thru. its

Chairman Vs. S. Amar Singh and others, 2005(2) R.C.R. (Civil) 332

whereby in paragraph No.6 it has been held as under: -

“6. After hearing the learned counsel for the parties I am of the considered view that the reliance placed by the Id. executing Court on the judgment of the Supreme Court in the case of A. Vishwanatha Pillai (supra) is meritorious. A specific question posed in para 2 in the afore-mentioned case is-whether the other co-owners who did not expressly seek reference are entitled to enhanced compensation pro-rata as per their share on the basis of decision made in favour of another co-owner'. The answer given to the afore-mentioned question is based on the principle that all the co-sharers are in possession and owner of every part of the land. The view of the Supreme Court becomes explicit from the last para of the judgment which reads as under :-

"When one of the co-owners or coparceners made a statement in his reference application that himself and his brothers are dissatisfied with the award made by the Collector and that they are entitled to higher compensation, it would be clear that he was making a request, though not expressly stated so but by necessary implication that he was acting on his behalf and on behalf of his other co-owners or coparceners and was seeking a reference on behalf of other co-owners as well. What was acquired was their totality of right, title and interest in the acquired property and when the reference was made in respect thereof under Section 18 they are equally entitled to receive compensation pro-rata as per their shares. The Courts below committed manifest error in refusing to pass an award and payment thereof to the appellants merely on the ground that there was no mention in this regard to the reference application or two of them sought reference in respect of two awards and the last one made no attempt in their behalf."

The afore-mentioned view of the Supreme Court squarely answers the controversy raised in this petition in favour of the claimant-respondent because it is admitted position that claimant-respondent is the co-sharer/co-owner of the acquired land to the extent of 1/7th whereas his children were entitled to 6/7th share and have got the enhanced compensation in pursuance to the order of the Tribunal dated 22.9.1996.”

Further, it has been observed in paragraph No.8 of this judgment that co-sharer is not required to file any reference under Section

18 of the Land Acquisition Act and even an application under Section 22-A of the said Act.

Since, the ratio of above-said judgment is fully applicable to the facts of the present, therefore, the impugned order dated 10.02.2014 (Annexure P-3), passed by the learned Additional District Judge, Jhajjar is hereby set aside as the Executing Court has made a reference to this judgment, however, the claim of petitioners has been dismissed.

Consequently, the present revision petition is allowed and direction is given to the Executing court to proceed with the execution in view of the judgment of this Court.

October 04, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No