

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

Date of decision: 16.02.2017

1. CR No.7922 of 2011 (O&M)

Gurmail Singh

... Petitioner

Vs.

Punjab State and others

... Respondents

2. CR No.7929 of 2011 (O&M)

Rup Singh

... Petitioner

Vs.

Punjab State and others

... Respondents

3. CR No.7831 of 2011 (O&M)

Zora Singh and others

... Petitioners

Vs.

Punjab State and others

... Respondents

4. CR No.7834 of 2011 (O&M)

Gurdev Singh and another

... Petitioners

Vs.

Punjab State and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. H.R. Bhardwaj, Advocate
for the petitioners.

Mr. Baljinder Singh Sra, Addl. AG, Punjab.

Mr. K.K. Gupta, Advocate
for respondents No.2 & 3.

RAMESHWAR SINGH MALIK, J. (ORAL)

These four identical revision petitions bearing CR No.7922 of 2011 (Gurmail Singh Vs. Punjab State and others), CR No.7929 of 2011 (Rup Singh Vs. Punjab State and others), CR No.7831 of 2011 (Zora Singh and others Vs. Punjab State and others) and CR No.7834 of 2011 (Gurdev Singh and another Vs. Punjab State and others), are being decided together, with the consent of learned counsel for the parties, vide this common order. However, for the facility of reference, facts are being culled out from CR No.7922 of 2011 (Gurmail Singh Vs. Punjab State and others).

Feeling aggrieved against the impugned order passed by learned executing Court (Additional District Judge), dismissing execution application of the decree-holders, as barred by limitation, decree-holders have approached this Court by way of these four identical civil revision petitions filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

These cases have a long and chequered history. Land measuring 132 bigha 01 biswa situated in Village Dhaula, District Sangrur was acquired for a public purpose; namely for construction of foodgrain godowns for Food Corporation of India-respondent No.2, vide notification dated 27.06.1978. Land owners felt dissatisfied with the award of Land Acquisition Collector and filed

their references under Section 18 of the Land Acquisition Act, 1894 ('the Act' for short), which were accepted by the learned reference Court, vide its award dated 28.01.1981 awarding Rs.666/- per biswa plus solatium @15%. Landowners-petitioners approached this Court, by way of regular first appeal bearing RFA No.483 of 1981, for further enhancement in the amount of compensation, for their acquired land. The regular first appeal came to be allowed by this Court vide order dated 13.03.1990, enhancing the amount of compensation from Rs.666/- per biswa to Rs.745/- per biswa. This Court also granted the statutory benefits of the amended provisions of Section 23(2) and Section 28 of the Act to the landowners.

Petitioners-decreeholders filed the first execution application on 05.06.1990 before the learned Additional District Judge, Sangrur. The beneficiary Department i.e. Food Corporation of India ('FCI' for short) appeared before the learned executing Court on 16.08.1990 and sought time for filing the objections. Accordingly, the learned executing Court adjourned the case for 18.09.1990. The objections were filed by judgment-debtors/respondents, which came to be dismissed by the learned executing Court vide its order dated 11.05.1991 and the same reads as under: -

“Present: Counsel for the D.H.

Counsel for F.C.I./J.D.

G.P. for the remaining J.D.

This order shall dispose of the objections filed by F.C.I./J.Ds. The only objection taken by it is that the D.H. is not entitled to have solatium at the rate of 30%, but is entitled to receive the solatium only at the rate of 15%. The copy of the judgment of the Hon'ble High Court has been attached by the

applicant with the present proceedings and in it I find that the Hon'ble High Court has granted solatium under the amended provisions of Section 23(2) of the Land Acquisition Act. Under the said provisions the solatium amount, to be given, is 30%. In the circumstances, the objections of the J.D. are without any meaning. The objection petition is dismissed. The J.D. is directed to make the payment of the amount claimed by the D.H. by 3.6.91. To come up on 3.6.91.

*Sd/- J.K. Goel,
Addl. District Judge,
Sangrur
11.5.91”*

Faced with the above, judgment-debtors/respondents filed civil miscellaneous application No.1476-CI of 1991, under Section 152 and 153 read with Section 151 of the Code of Civil Procedure, before this Court in the abovesaid RFA No.483 of 1981, seeking modification/clarification of the order dated 13.03.1990 passed by this Court. Against the abovesaid order dated 11.05.1991 passed by the learned executing Court, judgment-debtors also filed four revision petitions including CR No.2211 on 09.07.1991 as per grounds of revision (Annexure P-2) before this Court. Vide its order dated 03.03.1992 passed in CM No.1476-CI of 1991 in RFA No.483 of 1981, this Court stayed the further proceedings before the learned executing Court.

The learned executing Court rightly took notice of the abovesaid order dated 03.03.1992 passed by this Court, in its order dated 28.03.1992, which reads as under: -

“28.3.1992 Present: Counsel for the parties.

Further proceedings have been stayed by the Hon'ble High

Court vide order dated 3.3.92. To come up on 29.7.92 for awaiting further orders.

Sd/- ADJ”

However, on 03.08.1996, learned executing Court dismissed the execution applications in default, without receiving any order from this Court. The order dated 03.08.1996 passed by the learned executing Court reads as under: -

“Present: None on behalf of petitioners.

G.P. for the State.

The case was again called. It is 2.15 PM, petitioners did not turn up. His counsel also did not turn up. The execution is therefore dismissed in default. File be consigned in the record room.

Sd/- ADJ

3.8.96”

It seems that the abovesaid order dated 28.03.1992 passed by the learned executing Court was not noticed by the learned Court below nor the stay order granted by this Court was brought to its notice, at the time of passing of the abovesaid order dated 03.08.1996. CM No.14476-CI of 1991 in RFA No.483 of 1981 came to be dismissed by this Court vide its order dated 03.11.2007 (Annexure P-3) and the relevant operative part thereof, reads as under: -

“Having heard learned counsel for the parties and perusing the order passed by this Court as well as judgments cited. I am of the view that the present application deserves dismissal. Hon'ble Supreme Court in Bijay Kumar Saraogi (supra), while considering

an identical proposition of law whereby an application was filed by the land owners under Section 152 CPC for grant of benefit of the amended Act after passing of the decree, held that the provisions could be invoked only for the limited purpose of correcting clerical errors or arithmetical mistakes in the judgment and the section cannot be invoked for claiming a substantive relief, which was not granted under the decree.

In the present case, the proposition is just reverse. While passing the order, this Court granted benefit of amended provisions of the act. In case the applicants were aggrieved against the order passed by this Court, the same could very well be appealed against that course was not adopted and the present application was filed on June 3, 1991 for correction of order passed by this Court on March 13, 1990.

As far as the order passed in CM no.25-CI of 1990 in RFA No.1621 of 1980 Kesar Singh and others Vs. State of Punjab as cited by the learned counsel for the applicants is concerned, it would be suffice to add that though correction was made by this Court, however, perusal of the order shows that though correction was made without any objection from other side. In the present case, the application is strongly contested by the non-applicant raising legal objections. In that light, the order passed by this Court earlier cannot be relied upon to grant the prayer made by the applicants.

For the reasons mentioned above, the application is dismissed.”

After passing of the abovesaid order dated 03.11.2007 (Annexure P-3) by this Court, decree-holders/petitioners filed fresh execution application vide Annexure P-4 dated 26.04.2008. In para 5 of the execution application (Annexure P-4), decree-holders took the following averments: -

<i>“5. Previous application if any with date and result</i>	<i>Yes, before decision of the Hon'ble High Court. After the decision of the Hon'ble High Court, another execution was filed. Due to another revision pending before Hon'ble High Court against objection. Sh. Mehar Singh, ADJ Sangrur ordered to sine die the same, but that execution application is not traceable. Now revision has been dismissed by the Hon'ble High Court, so this execution is being filed.”</i>
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Although the identical objections filed on behalf of the judgment-debtor/FCI had already been dismissed by the learned executing Court vide its abovesaid order dated 11.05.1991, yet the judgment-debtor/FCI filed its objections raising the plea of limitation. In order to facilitate the learned executing Court, decree-holders/petitioners moved an application on 05.05.2010 (Annexure P-5) for summoning the file of the previous execution application. Learned executing Court vide its order dated 15.05.2010

summoned the record of previous execution application and the order reads as under: -

“Present: Counsel for parties as before.

DH has provided details of previous execution petition. That file be summoned from the records for 28.7.10.

Sd/- ADJ

15.5.10”

Accordingly, the file was received and thereafter, the learned executing Court passed the following order on 28.07.2010: -

“Present: Counsel for parties as before.

Sir, file received attached.

As above.

File recalled for consideration to come up on 11.8.10

Sd/- ADJ

28.7.10”

Considering the peculiar facts and circumstances of the case, learned executing Court rightly expressed its displeasure against the judgment-debtors, commenting against their hyper-technical objections, while passing its order dated 11.08.2010, which reads as under: -

“Present: Counsel for parties.

Ld. Counsel for applicant refers to Mohan Lal Vs. Deep Chand reported as 2000 (1) PLR 279. This execution as such has to be taken as the one filed in continuation of earlier of execution not the one file beyond limitation of 12 years from the date of decree. In an execution filed by a helpless whose land was forcibly (may call it legally) was taken over and who has not been

compensated as yet by the mighty state. It does not behove the state government to fight with its citizens on such like hyper technical objections. Reply to execution petition be filed on 30.8.10.

Sd/- ADJ

11.8.10”

However, without considering either the file of previous execution application or the abovesaid order dated 11.08.2010, learned execution Court dismissed the execution application of the petitioners, by passing the impugned order dated 07.09.2011 (Annexure P-1). Hence these revision petitions at the hands of the decree-holders.

Heard learned counsel for the parties.

When confronted with the abovesaid peculiar facts and circumstances of the case noticed hereinabove, learned counsel for the judgment-debtor/FCI had no answer and rightly so, it being a matter of record. In fact, it is a very sorry state of affairs that even after lapse of inordinate long period of about four decades, the poor landowners are still fighting with the authorities of the State for receiving the compensation for their acquired land. In such a situation, the landowners would be great sufferers at the hands of beneficiary department, who had been dragging the petitioners-landowners in one after the other unwarranted litigations during all these long forty years. It goes without saying that the value of money has gone down and the landowners would be hardly compensated, in the true sense of the term.

Admittedly, once the matter remained pending before this Court upto 03.11.2007 when the order (Annexure P-3) was passed, dismissing the application moved by judgment-debtor/FCI, vide CM No.1476-CI of 1991 in

RFA No.483 of 1981, it does not appeal to reason as to how the execution application dated 26.04.2008 (Annexure P-4) filed by the decree-holders/petitioners, could have been said to be barred by limitation. In such a situation, Article 136 of the Limitation Act would have no application to the facts of the present case.

In fact, learned executing Court misdirected itself, while completely ignoring the judicial record, including the orders dated 11.05.1991, whereby the similar objections filed by the beneficiary department-FCI/judgment-debtor were dismissed, order dated 28.03.1992 passed by the learned executing Court noticing the stay order dated 03.03.1992 passed by this Court, order dated 03.08.1996 passed by the learned executing Court dismissing the earlier execution application of the petitioners in default, order dated 15.05.2010 and 28.07.2010 regarding summoning and receipt of record of previous execution application and finally, the order dated 11.08.2010 passed by the learned executing Court. Having said that, this Court feels no hesitation to conclude that the impugned order dated 07.09.2011 passed by the learned executing Court is not only based on factually incorrect approach, as the impugned order runs counter to the judicial record, but the same is also patently illegal order, which cannot be sustained.

Learned executing Court also proceeded on a wholly misconceived approach, completely ignoring the abovesaid order dated 03.11.2007 passed by this Court as well as the specific averments taken in para 5 of the fresh execution application (Annexure P-4), while passing the impugned order. It seems that the learned Additional District Judge completely overlooked the judicial record at the time of passing of the impugned order. There was not even remotest scope to say that the fresh execution application filed by the decree-

holders was barred by limitation, particularly when the matter remained stayed by this Court for about 15 years, right from 03.03.1992 to 03.11.2007. In such a situation, no fault could have been found with the decree-holders and the impugned order cannot be sustained, for this reason also.

When identical objections raised by the judgment-debtor/FCI had already been dismissed by the learned executing Court vide its abovesaid order dated 11.05.1991, no fresh objections on behalf of the judgment-debtor were maintainable, because there was no change in the circumstances. Even if, these objections were to be filed by judgment-debtor/FCI in compliance of the order passed by this Court in their revision petition, still such objections were bound to fail because its abovesaid CM No.1476-CI of 1991 in RFA No.483 of 1981 had been dismissed by this Court vide order dated 03.11.2007 (Annexure P-3). However, since the learned executing Court has fallen in serious error of law, while passing the impugned order, which has been found patently illegal, it cannot be sustained, for this reason as well.

Learned counsel for the judgment-debtor/FCI miserably failed to support the impugned order either on facts or in law, referring to any material in this regard. Judgment-debtor/FCI had been proceeding on one or the other technical or super-technical approach, with a view to defeat most genuine claim of the petitioners/decreeholders in all these four cases. The approach adopted by the beneficiary department-FCI/judgment-debtor has been found most arbitrary. Since the learned executing Court failed to appreciate true facts of the case as well as the settled proposition of law in the correct perspective, the impugned order has caused manifest injustice to the petitioners/decreeholders, thus, it cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality and perversity, it cannot be sustained. The revision petitions filed by the decree-holders deserve to be accepted. Accordingly, the impugned orders in all these four cases are hereby set aside.

Consequently, learned executing Court is directed to proceed further to decide the execution applications on merits. As noticed hereinabove, since the land of decree-holders was acquired way back in the year 1978, learned executing Court is directed to make an endeavour to decide the execution applications in all these four cases, as expeditiously as possible.

Resultantly, with the abovesaid observations made and directions issued, all these four revision petitions stand allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

16.02.2017

vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No