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

CR-690-2015

Date of decision : 03.05.2018

Pushpa Sharma

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chirag Kundu, Advocate
for the petitioner.

Mr. P.K. Longia, Advocate
for respondent No.3.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 22.03.2014, whereby the execution application filed by the petitioner for seeking enhancement amount of compensation without filing a reference under Section 18 of the Land Acquisition Act, had been dismissed.

Learned counsel for the petitioner submitted that a notification under Section 4 under the Erstwhile Land Acquisition Act was issued on 28.01.2002 and thereafter, award was passed on 20.01.2005. As per the averments made in the revision petition, it was stated that one Shanti Devi daughter of Ladha had purchased one plot measuring 28x65 i.e. 1820 sq. fts., being part of khasra Nos.895, 896, 897, 898, 899/840 situated within the revenue estate of Village Garhi Mundo Tehsil Jagadhri from Partap Nagar, House Building Society vide sale deed dated 16.03.1960. She died issueless and the petitioner by virtue of decree dated 17.05.1994 became the owner of the property. On merging of *Abadi* and plot of the petitioner, the aforesaid khasra numbers along with other khasra numbers became khasra

number 308/3, which fact is evident from the demarcation report dated 11.02.2011. Earlier the landowner had filed a reference under Section 18 of the Erstwhile Land Acquisition Act and petitioner when received the cheque dated 26.02.2011 came to know that the land of the co-sharer of Khasra No.308/3 was acquired. The petitioner immediately filed an execution application, which was contested by the respondents. The aforementioned execution application has been dismissed on account of non-availing of the remedy under Section 18 of the Erstwhile Land Acquisition Act. In support of his contentions, he relied the *ratio decidendi* culled out by Hon'ble Supreme Court in **“Narendra and others V/s State of Uttar Pradesh and others” 2017(3) Law Herald (SC) 2299** to contend that the other co-sharers, who do not file the reference, cannot be prevented from filing the execution application.

Learned counsel for respondent No.3 submitted that the impugned order is perfectly legal and justified and the same is liable to be sustained in view of the findings rendered by this Court in **“Smt. Champa and others V/s Stae of Haryana” 1989(2) RRR 158**, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that the finding of the Court below is not correct in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **“Narendra's case** (supra). For the sake of brevity, the relevant paragraph 7 and 10 of the same reads as under:-

“7) The purpose and objective behind the aforesaid provision is salutary in nature. It is kept in mind that those land owners who are agriculturist in most of the cases, and whose land is

acquired for public purpose should get fair compensation. Once a particular rate of compensation is judicially determined, which becomes a fair compensation, benefit thereof is to be given even to those who could not approach the court. It is with this aim the aforesaid provision is incorporated by the Legislature. Once we keep the aforesaid purpose in mind, the mere fact that the compensation which was claimed by some of the villagers was at lesser rate than the compensation which is ultimately determined to be fair compensation, should not be a ground to deny such persons appropriate and fair compensation on the ground that they claimed compensation at a lesser rate. In such cases, strict rule of pleadings are not to be made applicable and rendering substantial justice to the parties has to be the paramount consideration. It is to be kept in mind that in the matter of compulsory acquisition of lands by the Government, the villagers whose land gets acquired are not willing parties. It was not their voluntary act to sell of their land. They were compelled to give the land to the State for public purpose. For this purpose, the consideration which is to be paid to them is also not of their choice. On the contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector. Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court etc. In order to ensure that the land owners are given proper compensation, the Act provides for 'fair compensation'. Once such a fair compensation is determined judicially, all land owners whose land was taken away by the same Notification should become the beneficiary thereof. Not only it is an aspect of good governance, failing to do so would also amount to discrimination by giving different treatment to the persons though identically situated. On technical grounds, like the one

adopted by the High Court in the impugned judgment, this fair treatment cannot be denied to them.

***10)** Prof. (Dr.) N.R. Madhava Menon explains the meaning and contour of social justice adjudication as the application of equality jurisprudence evolved by the Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the socio-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Court has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. The Courts, in such situations, generally invoke the principle of fairness and equality which are essential for dispensing justice. Purposive interpretation is given to subserve the ends of justice particularly when the cases of vulnerable groups are decided. The Court has to keep in mind the 'problem solving approach' by adopting therapeutic approaches to the maximum extent the law permits rather than 'just deciding' cases, thereby bridging the gap between law and life, between law and justice. The notion of access to justice is to be taken in a broader sense. The objective is to render justice to the needy and that means fair solutions to the conflict thereby providing real access to 'justice'."*

I am of the view that the execution application at the behest of the co-sharer, whose land had been acquired and not filed the reference, is maintainable.

Keeping in view the aforementioned fact, the impugned order, under challenge, is not sustainable in the eyes of law being perverse and the

same is hereby set aside. The execution application is ordered to be restored to its original number.

Accordingly, the present revision petition is allowed.

03.05.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No