

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

Civil Revision No.6631 of 2017 (O&M)

Date of decision: May 14, 2018

The State of Haryana through Collector, Bhiwani and others

...Petitioners

Versus

Dharampal since deceased through LR's

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pawan Kumar Jangra, Addl. Advocate General, Haryana
for the petitioners-State

Mr.R.A.Sheoran, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners have filed this revision petition against respondent Dharampal through LR's under Article 227 of the Constitution of India for setting aside the order dated 11.07.2016 passed by learned Addl. Civil Judge (Senior Division), Tosham, vide which the objections to the execution petition filed by the petitioner, have been dismissed.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the petitioners-State as well as learned counsel for the respondent and have gone through the record.

From the record, I find that Dharmapal since deceased through LR's filed a suit against State of Haryana and other defendants for

declaration to the effect that land in dispute measuring 3 kanals 2 marlas is

owned and possessed by plaintiff and out of this land, defendants have constructed Bhurtana Sub Minor and they have not paid any compensation. It is further stated that plaintiff is entitled to receive compensation as per market rate along with interest @ 24% per annum along with costs. The plaintiff also sought relief of mandatory injunction for directions to pay the compensation of the land along with interest.

Learned Addl. Civil Judge (Sr. Divn.), Bhiwani, vide judgment dated 19.01.2010, decreed the suit of the plaintiff and directed the defendant to give compensation to the plaintiffs from the date of possession within a period of three months along with interest @ 24% per annum. This decree was challenged and learned Addl. District Judge, Bhiwani, vide judgment dated 07.05.2010, dismissed the appeal. Then, RSA was filed before this Court, which was also dismissed, as argued.

During the execution proceedings filed by the decree holder, objections were filed by State of Haryana-JDs, in which, it is stated that learned lower Court has directed the defendants to give compensation to the plaintiffs from the date of possession within a period three months along with interest @ 24% per annum and they calculated the amount as ₹30,914/-. The compensation was counted as per rate which was given to other land owners at the time of acquiring the land in the year 1985 whereas the decree holder in the execution is claiming amount of ₹34,69,385/-. Learned Addl. Civil Judge (Sr. Divn.), Tosham, vide order dated 11.07.2016, dismissed the objection petition.

Aggrieved from the above-said order dated 11.07.2016, present revision petition has been filed.

The perusal of the decree shows that learned Addl. Civil Judge

(Sr. Divn.), Bhiwani, decreed the suit of the plaintiff by giving direction to defendants to pay compensation from the date of possession along with 24% interest per annum within three months. This decree has not been challenged by the plaintiff whereas the decree was challenged by the defendants-JDs and the appeals were dismissed. Now, this decree has become final between the parties. It is settled law that Executing Court cannot go beyond the decree and the Court is to execute the decree as it is passed by the Court.

Learned counsel for the respondent argued that as per judgment passed in *Anant Ram and other vs. State of Haryana and another, (CWP No.16819 of 2010) decided on 19.11.2010*, the Hon'ble Division Bench of this Court has given the relief by asking the State to first acquire the property within four months and then to pay the compensation. The above-cited judgment will not apply in the present case as in that case, the order has been passed in the writ petition whereas in the case in hand, the plaintiff has filed civil suit and decree has been passed and now the plaintiff want to get executed that decree. Therefore, whatever relief has been given by the Civil Court in the decree that is to be executed. The Executing Court cannot enhance the amount nor can give any further direction to acquire the property etc. It is not within the jurisdiction of the Executing Court to go beyond the decree.

Second point on which learned counsel for the respondent is contesting is that respondent has asked for the compensation at the market rate, therefore, the market rate is to be assessed. The perusal of the decree shows that nowhere market rate has been given by the Court below.

from the date of possession. The possession was taken admittedly in the year 1985, which means that the compensation is to be given at the prevalent rate in the year 1985 along with interest @ 24% per annum from that date. If the interpretation of learned counsel for the respondent that the market price is to be taken as more than ₹34 lakhs, then the amount along with interest from the year 1985 would come to more than ₹10 crores till today, for 3 kanals 2 marlas. This interpretation cannot be given. The objectors have calculated the amount on the basis of compensation, which was paid to other land owners at that time and then total amount was calculated by giving 24% interest on that compensation. The compensation is to be given, which is given to other land owners. The case of the decree holders cannot be distinguished from other land owners. Therefore, the objections filed by present petitioners are having merit. Furthermore, it is the plaintiff, who kept silent for more than 21 years. He filed the suit after 21 years of taking possession of the property by the State for constructing minor canal etc.

Keeping in view the above facts, I find merit in the present petition and the same is allowed. The objections filed by the present petitioners before the Executing Court are accepted and the impugned order dated 11.07.2016 passed by learned Addl. Civil Judge (Senior Division), Tosham, being not as per law, stands dismissed.

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 14, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No