

**C.M. No.5762-CII of 2016 and  
C.R. No.753 of 2016**

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

**C.M. No.5762-CII of 2016 and  
C.R. No.753 of 2016  
Date of Decision.25.04.2018**

Smt. Krishna Devi

.....Petitioner

Vs

State of Haryana and others

.....Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sanjay Kaushal, Sr. Advocate with  
Mr. Nipun Vashist, Advocate  
for the applicant-respondent No.4.

Mr. Naveen S. Bhardwaj, Advocate  
for the non-applicant/petitioner.

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**AMIT RAWAL J.(ORAL)**

The misc. application bearing No.5762-CII of 2016 is for recalling of the order dated 03.02.2016 rendered in C.R. No.753 of 2016 filed at the instance of Krishana Devi challenging the order dated 22.12.2015, whereby the Land Acquisition Collector was directed to reconsider the mater as per directions of the Executing Court.

Mr. Sanjay Kaushal, learned Senior Counsel assisted by Mr. Nipun Vashist appearing for the applicant-respondent No.4 submitted that the Reference Court decided the reference under Section 18 of the erstwhile Land Acquisition Act, 1894 on 30.09.2009. On 29.04.2010, an execution application was filed by the applicants including the non-applicant/petitioner. Form D was prepared by the concerned authority on 19.01.2011. On 27.04.2011, an application was submitted by Krishna Devi for issuance of DRO and she received payment of her share on 4.5.2011.

On 5.5.2012, the applicant-respondent filed an application for correction of

aforementioned Form-D, which was allowed on 22.11.2012 and the revised Form-D was issued on 22.11.2012. On 23.11.2012, the non-applicant/petitioner moved an application (Annexure A-4) under Section 151 CPC for stopping the payment of the award in favour of the applicant-respondent No.4 on the basis of a decree dated 2.4.1994. The aforementioned application was contested by the applicant-respondent No.4.

Vide order dated 26.05.2015, the Executing Court directed the Land Acquisition Collector for passing a reference under Section 30. On 24.07.2015 (Annexure A-7), the Land Acquisition Collector passed a speaking order whereby it was stated that as per office record the actual name instead of Om Parkash was Anil Kumar, thus, upheld the revised Form-D dated 22.11.2012.

On 6.11.2015, the non-applicant/petitioner filed objections against the order dated 24.07.2015 which were dismissed vide order dated 22.12.2015 (Annexure A-9). It is said order which has been challenged in the revision petition.

He submitted that the decree dated 2.4.1994 had not seen light of the day nor had been brought to the notice of the Court or to the applicant. During all these proceedings, Krishana Devi had not availed any independent claim under Section 18(2) of the erstwhile Land Acquisition Act, 1894 and the remedy as reflected in the impugned order is either to seek reference under Section 30 to the Collector or file independent suit as both remedies are at the same pedestal, in view of the law laid down by Hon'ble Supreme Court in **Dr. G.H. Grant Vs. State of Bihar AIR 1966 SC**

The Court on receipt of application on 21.03.2016 while issuing notice restrained the Land Acquisition Collector not to pass any order in compliance of the order dated 03.02.2016 passed by this Court.

He further submitted that there was no illegality and perversity in the order as the order sought to be recalled was passed at the back of the applicant-respondent. All these factors were not brought to the notice of this Court while getting notice of motion order in the revision petition. The observations of the trial Court that there was no reference petition under Section 30 of the erstwhile Act was correct approach in accordance with law.

Per contra, Mr. Bhardwaj, learned counsel appearing on behalf of the non-applicant/petitioner submitted that the non-applicant/petitioner is seeking enhancement of amount of compensation but in case the order under challenge in revision petition is upheld, the non-applicant/petitioner would be left high and dry. It was incumbent upon the Land Acquisition Collector to send the reference, therefore, the order dated 22.12.2015 under challenge in the revision petition was not sustainable in the eyes of law. The decree dated 2.4.1994 is still holding field as had not been challenged. The decree had conferred share to her in the property, therefore, Om Parkash is not entitled for disbursement of single penny, thus, urges this Court for dismissal of the application by maintaining the order passed in the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submission of Mr. Kaushal and the reason is not one but many.

The order dated 22.12.2015 impugned in the revision petition

had only given a liberty to the non-applicant/petitioner to seek reference under Section 30 or file an independent suit claiming her right in the property in pursuance of the decree of 1994. With regard to law of apportionment of compensation, the Legislature in the erstwhile Act had taken care this situation for the purpose of apportionment, by carving out Section 30, which reads as under:-

*“30. Dispute as to apportionment. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.*

*(2) Each such person shall be entitled to obtain execution of the award to the extent of the amount due to him without the consent or concurrence of the other persons”*

The aforementioned provisions of law came for consideration and ponderance before the Court below, much less, Hon'ble Supreme Court as referred above and in such situation, the remedy for respective claimants is either to approach the Collector for reference of dispute to the Court for adjudication or filing an independent suit. The decree of 1994 concededly has not seen the light of the day till the application was moved in the year 2012 at the behest of the non-applicant/petitioner. Concededly the amount of compensation is lying deposited in the office of Collector. The Court, in my view, could not have directed the Executing Court to look into the decree for the purpose of apportionment of compensation in the absence of the

respondents in the revision petition i.e. applicant in the present application.

In view of such situation, the order dated 3.2.2016 is hereby recalled. The application stands allowed.

**C.R. No.753 of 2016**

With the consent of both the parties, the revision petition is taken up today itself for final disposal.

In view of the order passed in the misc. application bearing No.5762-CII of 2016, I am of the view, that the order dated 22.12.2015, which is under challenge in the present revision petition, is perfectly legal and justified in relegating the non-applicant/petitioner to avail the remedy under Section 30 of the erstwhile Act or otherwise seek apportionment of her claim to the amount of compensation purportedly the share of Anil Parkash in accordance with law. The disbursement of the amount of compensation in favour of Anil Parkash can always be subjected to any terms and conditions which the Executing Court deem it appropriate by furnishing the adequate security so that interest of the non-applicant/petitioner is protected.

I do not find any illegality and perversity in the order under challenge as the same is perfectly legal and justified and cannot be said to be passed without jurisdiction. The revision petition is dismissed with aforementioned observations.

**(AMIT RAWAL)  
JUDGE**

**April 25, 2018**  
Pankaj\*

Whether reasoned/speaking      Yes

Whether reportable      No