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

**CR No.8864 of 2014
Date of Decision: 11.09.2018**

Ravi Kapoor and another

......Petitioners

Vs.

Union of India and others .....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Petitioner no.1 in person.

Mr.Denesh Goyal, Advocate,
for respondents no.1 to 3.

None for respondent no.4.

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AMOL RATTAN SINGH, J.

By this petition, the two petitioners challenge the order of the learned Additional District Judge-cum-Land Acquisition Collector, Amritsar, dated August 11, 2014 (a copy of which is Annexure P-5), by which an order dated 14.06.2010 was made final and the legal heirs of the person whose property had been acquired by the Union of India (Department of Income Tax), were held entitled to file an application to claim the compensation amount. The orders were passed on an application filed by the respondent Department of Income Tax (respondents no.1 to 3 herein), dated 03.05.2010, under Section 269-K(3) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), seeking to deposit a cheque of Rs.2,42,254/-. (Vide the order passed earlier on 14.06.2010, the application was allowed to the final decision on the legality of the application).

The background to the case is being taken from the impugned order itself, wherein it has been set out in detail.

2. A property bearing plot no.32-33, Khasra no.18, situated at Rai Bahadur Duni Chand Road, Abadi Dayanand Nagar, Amritsar, is stated to have been owned by one Mohan Lal, who sold it to one Manak Chand Khanna, vide a sale deed dated 17.06.1974.

The said property was acquired by the Central Government under Section 269-F(6) of the Act, vide an order of acquisition passed by the Inspecting Assistant Commissioner of Income Tax, Acquisition Range, Amritsar, dated 17.02.1978.

That order having been appealed against by Manak Chand Khanna, the appeal was dismissed by the Income Tax Appellate Tribunal on 05.10.1981. The said order was also unsuccessfully challenged before this Court though the date of the dismissal of the revision petition/writ petition and even the details thereof are not given in the impugned order, however the factum of dismissal of the petition is not in dispute as per a specific query put by this Court to petitioner no.1 (appearing in person), as also to counsel for the respondent Income Tax Department.

3. Manak Chand Khanna already having been died in the meanwhile on 29.09.1980, his wife and legal representative, Prem Wati Khanna, thereafter filed a writ petition before this Court. (Again, the details of the petition are not given in the impugned order and are also not known to the petitioners or the counsel appearing for the respondents, but again, the *factum* of dismissal of that writ petition on 11.03.1983 is not doubted in any manner).

Hence, as per the respondents and as stated in the impugned order, Manak Chand Khanna ceased to be the owner of the property, which stood duly acquired and vested in the Central Government from the date of the order of acquisition, i.e. 17.02.1978.

4. Consequently, a notice to surrender and deliver possession of the property was served upon Prem Wati Khanna, who however did not surrender it willingly, upon which an order was passed on 08.02.1989 by the Deputy Commissioner of Income Tax, Acquisition Range, Amritsar, under Section 269-I(2) of the Act, after which the property came to be taken into the possession of the department, as per its stand before the learned Court below and before this Court.

5. Thereafter, the petitioners, Ravi Kapoor and Arun Taneja, filed a suit seeking a declaration that actually they are owners-in-possession of a half share of the suit property measuring 586 square yards, contained in Khasra no.18 min, further seeking a decree of permanent injunction restraining the respondents (defendants in the suit), i.e. the Union of India and others, from interfering in their peaceful possession of the property and from dispossessing them forcibly from the plot in dispute.

The petitioners (plaintiffs in the suit) had contended that Manak Chand Khanna had appointed Pran Lal Khanna as his general attorney, who had executed a sale deed in their favour in 1991.

That suit was also dismissed by the learned Additional Civil Judge (Senior Division), Amritsar, vide a judgment and decree dated 20.10.2000, holding therein that the property already stood acquired and vested in the Central Government, which was also in its possession. The Ist appeal filed against that judgment and decree was dismissed by the learned Additional District Judge, Amritsar, vide a judgment and decree dated 04.02.2005; and the regular second appeal filed against those judgments and decrees, i.e. RSA no.1538 of 2005, was also dismissed by this Court on

16.09.2008.

6. It is thereafter that the respondent Income Tax Department filed an application under Section 269-K(3) of the Act on 03.05.2010, seeking to deposit a cheque of Rs.2,42,254/- in the Court, on the ground that the true legal heirs of Manak Chand Khanna, from whom the disputed property had been acquired, could not be 'traced out', despite best efforts.

7. The application having been conditionally allowed on 14.06.2010, with the cheque accepted and deposited subject to the decision of the legality of the application, on 06.01.2011 petitioner no.1 herein filed an application before the learned Additional District Judge, seeking to implead the Central Public Works Department (CPWD), through its Superintending Engineer, Jammu Central Circle, on the ground actually it was only the said department that was the competent authority to tender and to pay the compensation, after proving on record the *factum* of taking over actual physical possession of the property.

The said application was allowed on 28.10.2013 with the CPWD impleaded as a party to the proceedings before the learned Additional District Judge, the said department having duly appeared before that Court, initially stating there that as per instructions issued by the Central Board of Direct Taxes, the CPWD was appointed as competent authority for taking over and managing the immovable properties acquired by the Government under Chapter XXA of the Act.

8. Having noticed the aforesaid facts, the learned Additional District Judge, vide the impugned order, came to the conclusion that the property in question actually stood acquired vide an order dated 17.02.1978, in terms of Section 269-F (6) of the Act, with that order having become final upto this

Court on 11.03.1983 (with the dismissal of the petition filed against the order of the Income Tax Appellate Tribunal), and therefore the property stood fully vested in the Central Government, which vide an order dated 08.02.1989, had also taken possession thereof.

Hence, the sale deed of the year 1991, by which the present petitioners are stated to have purchased half the property from the original owner, i.e. Manak Chand Khanna through his attorney, could not be taken into account (Manak Chand Khanna obviously no longer being the owner thereof), with in fact even the civil suit filed by the present petitioners, seeking a declaration of ownership and consequential injunction, having been dismissed.

9. Therefore, it was held that the petitioners, Ravi Kapoor and Arun Taneja, having no title, right or interest in the property, also have no right to be heard in the proceedings under Section 269-I of the Act and it would only be the legal heirs of Manak Chand Khanna who had any right to receive the amount deposited by the Income Tax Department, who (the legal heirs) it was stated by that Department, were not traceable.

It has also been held in the impugned order that in terms of Section 269-K(2), if any dispute arises as to the apportionment of compensation amongst persons claiming to be entitled thereto, the Central Government shall deposit in the Court the compensation required to be tendered under sub section (1) and refer such dispute for the decision of the Court, with that decision to be final; [which effectively would also be so in terms of Section 269-K(3) of the Act, by which, if a person entitled to compensation does not receive it, or if there is no person to alienate the immovable property, again the amount would be deposited in the Court for its decision thereon (on the right to receive compensation)].

On the right to receive compensation, it has been held vide the impugned order that the cheque for an amount of Rs.2,42,254/- is payable to the legal heirs of Manak Chand Khanna, with the petitioners, Ravi Kapoor and Arun Taneja, having no right, title or interest to the said amount.

10. Before this Court, petitioner no.1 firstly submitted that the Department of Income Tax was not the competent department to even deposit compensation in respect of the suit property before the trial Court and as such, the impugned order, allowing the Income Tax Department to deposit the compensation, denying right to the petitioners, to such compensation, is wholly illegal, as actually the compensation should have been deposited by the Central Public Works Department (CPWD), in terms of the letter of the Income Tax Department (Annexure P-9).

He further submitted that possession of the suit property also has not been taken by the Income Tax Department.

11. He next submitted that Chapter XXA having been repealed/deleted from the Income Tax Act in the year 1986, with the suit property not having vested in the Income Tax Department, it would be deemed to be a pending proceeding even in 1986, and consequently, the property would still be vesting in the original owner, i.e. Manak Chand Khanna and his LRs, from whom petitioner no.1 and his partner purchased it by way of a registered sale deed in the year 1991.

Upon a query by this Court as to how, even if this contention was to be accepted at its face value, this Court would review an order of a co-ordinate Bench passed in RSA-1538-2005, twelve years ago, holding petitioner no.1 and his partner not entitled to the suit property, he referred to a judgment of the Supreme Court in "**M.Mathew Thomas and others Vs. Commissioners of Income Tax**" (Civil Appeal No.1566 of 1993), to submit that the property never having vested in the Income Tax Department, no compensation infact was to be paid by the Department and therefore, the petitioners would be deemed to be the owner thereof.

12. *Per contra,* Mr. Denesh Goyal, learned counsel for respondents no.1 to 3, i.e. the Union of India in the Department of Income Tax, submitted that the CPWD has already stated that it is not concerned with the plot, it having been acquired by the Income Tax Department under Chapter XXA of the Income Tax Act, 1961, as a pre-emptory measure, and if any directions were given to the Central Public Works Department (CPWD) for taking over the property, it would not make any difference with regard to the compensation to be paid.

He further submitted that this the 3rd round of litigation, with the predecessor-in-interest of the petitioner, i.e. the original owner of the suit property, Manak Chand Khanna, having first filed an appeal before the Income Tax Tribunal against the order taking over the property, which was dismissed on October 05, 1981, that order having been upheld even by this Court, (as has been referred to in the impugned order, even though the details of the order by this Court have not been given).

He further submitted that thereafter a writ petition was filed by the legal heirs of the aforesaid Manak Chand Khanna, which was also dismissed by this Court.

Learned counsel then referred to the civil suit filed by petitioner no.1 and his co-plaintiff, seeking a decree of declaration in his favour qua the suit property and the consequential relief of permanent injunction, which again was dismissed by the Civil Court, that judgment and decree upheld by the Ist appellate Court as also by this Court by way of RSA-1538-2005, decided on September 16, 2008.

13. Upon query to petitioner no.1 with regard to the aforesaid facts pertaining to previous litigation, he, very fairly, did not deny the previous litigation at all, but reiterated that in terms of the judgment of the Supreme Court in **M.Mathew Thomas** (supra), with Chapter XXA of the Act having been repealed in the year 1986 (actually amended qua transfer of immovable properties after 30.09.1986), the suit property could not be deemed to be vesting in the Income Tax Department and would continue to vest in Manak Chand Khanna from whose power of attorney/legal representatives the petitioners had purchased it in the year 1991.

14. Having considered the aforesaid arguments as also the entire case history, as regards the petitioners' contention that in terms of the judgment of the Supreme Court in **M.Mathew Thomas**, the property never having vested in the Income Tax Department no compensation could be paid by that Department and hence it would continue to be owned by them (petitioners), that argument has to be rejected firstly in view of the fact that the petitioners' suit seeking a declaration that they are owners-in-possession of the suit property and that the respondent department be injuncted from interfering in their possession thereof, has been dismissed, with, to again repeat, the said judgement dated September 16, 2008, passed in RSA No.1538 of 2005, having become final, very obviously this Court cannot sit upon that judgment to hold to the contrary.

The case file of the said appeal having been called for, it is seen that, in fact, the contention raised by the petitioners presently with regard to

Chapter XXA having been made inapplicable to any transfer of immovable property made after September 30, 1986, has been duly dealt with in that judgment, noticing Section 269RR of the Act, eventually therefore holding that since the property was acquired well prior to 1986 and the acquisition having become final by way of dismissal of the appeal and the writ petition filed against such acquisition, the amendment made, w.e.f. September 30, 1986, would not affect such proceedings of acquisition.

Hence, simply because the judgment in *Mathews'* case was not brought to the notice of the Court in those proceedings, that would not change the fact that the petitioners contended right to the property was ousted in that civil suit, which obviously cannot been reopened by this Court.

15. Equally important and pertinent, other than that fact, it is seen that in the judgment in *Mathews'* case, the proceedings challenging the acquisition of the property in question in that case, were still pending before the Kerala High Court at the time when Chapter XXA was amended in September 30, 1986, and therefore it was held by the Supreme Court that the benefit of the circular issued by the Income Tax Department with regard to applicability of the amended provision on pending proceedings, would also apply where any order of acquisition was under challenge in further proceedings before the High Court.

Thus, other than the fact that the petitioners even came to purchase the property in the year 1991, from a person who was not competent to sell it, he no longer being the owner thereof, the order acquiring his property having attained finality on 05.10.1981, and in any case the present petitioners having finally 'lost their suit' 10 years ago, the judgment in *Mathews'* case is otherwise also not applicable at all, acquisition proceedings having become final even before this Court (with no further challenge thereto), much before 30.09.1986.

16. The petitioners even thereafter had agitated their claim by way of a writ petition (CWP-20753-2014) before this Court, which they withdrew with no liberty to file any other proceedings, on 29.10.2014. Thus, on no ground at all, are they entitled to the suit property, in any manner whatsoever.

17. As regards whether the respondents have actual physical possession of the property or not, I find it absolutely unnecessary to go into that issue, the suit earlier filed by the petitioners being one seeking a declaration that they are owners in possession of the suit property, which suit, to yet again repeat, was dismissed. Hence, if the petitioners are still in occupation of the suit property as they claim, without making any comment on the correctness of that contention (or otherwise), it needs to be stated here that such occupation is obviously illegal, with the property vesting in the respondents and in fact an order for taking possession having been passed in the year 1989, as already noticed.

18. As regards the argument of the petitioners, to the effect that it was the Central Public Works Department (CPWD) and not the Department of Income Tax which was 'competent' to pay compensation and therefore the compensation actually having been deposited by the Income Tax Department, it would be considered to be by an incompetent authority and hence deemed to be not received or receivable, and on that account the property would deemed to be vesting in the petitioners even now, that also is an argument to be wholly rejected; firstly for the reason that whether it is one department of the Union of India or the other that deposits compensation, would be immaterial, the property having vested in the Union of India. Secondly, though counsel for

the CPWD is not present, learned counsel for the Income Tax Department has pointed out that though even as per the letter Annexure P-9, addressed on May 1, 1978 by the Inspecting Assistant Commissioner to the Executive Engineer, Jullundur Central Division of the Central CPWD, it was that department that was only to arrange for the compensation, which is not the concern of the person receiving the compensation, but only the concern of the Income Tax Department, as to from which source it is to be paid.

That argument of learned counsel for the Revenue is fully acceptable and is so accepted, with the compensation in any case being deposited on behalf of the Union of India.

19. As regards the petitioners' right to any part of the compensation of Rs.2,42,254/-, firstly of course petitioner no.1 has not seriously agitated before this Court such claim (his 'vehement' contention being that he and his co-petitioner are the rightful owners of the property), but even if such an argument had been seriously pursued, though the petitioners' claim is that they purchased half the property in question for a valuable consideration in 1991 from the original owner thereof, however, even so, such owner having lost any right to the property in 1978 itself (and finally in 1981 and again in 1983 with dismissal of his petitions before this Court), he had ceased to be its owner, with no right to sell that property to the petitioners, it having vested in the Union of India for about 13 years as on the date the sale deed was executed, (as is relied upon by the petitioners), in 1991.

Consequently, the property having been acquired in terms of Section 269F(6) of the Act, from Manak Chand Khanna in the year 1978, in my opinion the learned Additional District Judge has correctly held in the impugned order that it would only be the legal heirs of Manak Chand Khanna, who would be entitled to payment of compensation, upon them filing any application before that Court.

20. Therefore, in the light of the above discussion, I find no reason to interfere with the impugned order and consequently, this petition is dismissed.

The petitioners themselves having continuously litigated for this property for the 3rd round after having lost two earlier rounds by way of RSA no.1538 of 2005 and CWP no.20753 of 2014, they also being fully aware of the fact that, earlier, two rounds of litigation by the original owners had been 'lost', a cost of Rs.25,000/- is imposed upon them.

September 11, 2018 **(AMOL RATTAN SINGH)**
dharamvir/dinesh **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No.