

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

**CR No.4242 of 2019(O&M)
Date of Decision-19.11.2019**

Municipal Committee/Council, Jalalabad(W) ... Petitioner

Versus

Vimla Devi (now deceased) through her LR and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Puneet Kansal, Advocate and
Ms. Nikhita Kansal, Advocate
for the petitioners.

Mr. Vikas Bahl, Senior Advocate with
Mr. C.M. Munjal, Advocate and
Ms. Priyanka Kansal, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Petitioner/Municipal Committee/Council has preferred this revision petition against the order dated 24.05.2019 passed by the Executing Court/Additional Civil Judge (Senior Division), Jalalabad(W), vide which the application filed by the petitioner/judgment debtor for dismissal of the execution petition filed by the decree holders/respondents No.1 and 2 for enforcement of the decree for mandatory injunction being time barred was dismissed.

[2]. Some facts are necessary to be noticed. In the year 1979, Municipal Committee/Council, Jalalabad had taken the land of respondents No.1 and 2 for carving out streets without acquiring the

same. Respondents No.1 and 2 filed a suit for mandatory injunction, directing the Municipal Committee/Council, Jalalabad for implementing the building scheme Nos.1 and 2 after assessing the compensation as per demarcation made by Patwari on 27.05.1985 after removing the illegal construction made by the petitioner and respondents No.3 to 5 in the shape of shop on the land of the plaintiffs/respondents No.1 and 2 herein with the consequential relief of permanent injunction, restraining the Municipal Committee/Council, Jalalabad from making construction on the land of the plaintiffs/respondents No.1 and 2 without demarcation and from demolishing the construction made by the plaintiffs/respondents No.1 and 2.

[3]. Trial Court dismissed the suit vide judgment and decree dated 21.12.1993 merely on the ground that the plaintiffs have failed to establish how much land was acquired and further if at all, the plaintiffs wanted the compensation for the land, they could move the proper Forum for compensation. Trial Court further recorded a finding that the relief of mandatory injunction cannot be granted since there was no breach of obligation specially when the plaintiffs have their legal remedies before the appropriate authority who has acquired the land for assessment of the compensation and for payment of the same.

[4]. In the appeal preferred by the plaintiffs before the Lower Appellate Court, the judgment and decree of the trial Court was

modified vide judgment and decree dated 19.11.1999 passed by the Lower Appellate Court. Municipal Committee/Council was directed to implement the building plan in letters and spirit.

[5]. Plaintiff/respondents No.1 and 2 filed RSA No.1871 of 2000 in the High Court. The said regular second appeal was disposed of on 12.05.2000 with certain directions to be complied with, within six months. The operative part of the order reads as under:-

"After hearing the learned counsel for the appellant, this Court is of the considered opinion that the judgment dated 19.11.1999 requires some clarification/modification. Both the Courts have come to the conclusion that the Municipal Committee, Jalalabad formulated a scheme, but failed to implement the same in letter and spirit. Directions were accordingly given rightly by the first Appellate Court that Municipal Committee is directed to implement the scheme in letter and spirit.

The grouse of the plaintiff appellants is that in spite of the fact that it is the admitted case of the Municipal Committee that the land of the plaintiff appellants is being utilized by it for the purpose of streets, but no provision for compensation has been made nor any compensation has been paid to them.

The learned counsel for the appellants states that his clients would be satisfied if directions are given to the Municipal Committee that if it has utilized the land of the plaintiffs, either it should pay the compensation or should take suitable steps within a reasonable time for the payment of compensation to the plaintiffs. I find genuineness in the arguments of the learned counsel for the appellants. In these

circumstances, the present appeal is disposed of with the directions to Municipal Committee, Jallalabad that if the land of the plaintiffs has been utilized in order to lay out the streets and it wants to acquire that area for laying out streets, the reasonable compensation should be given to the plaintiffs. The direction of the Court may be adhered to by the Committee within six months from the receipt of the copy of this order.

Copy dasti. One copy of the order be sent to the Municipal Committee, Jallalabad for information and necessary action."

[6]. Thereafter, Municipal Committee/Council filed an application for recalling of the order dated 12.05.2000 on the premise that the order was passed in the absence of the Municipal Committee/Council. After hearing both the sides, High Court dismissed the application vide order dated 12.12.2000. by passing the following order:-

"The prayer made by Mr. Pathela is for recalling the order dated 12.05.2000. It is true that this order was passed in the absence of the applicants and without notice to the Municipal Committee but after hearing the learned counsel for the parties, I am of the considered opinion that there is no illegality, perversity or error apparent in the order dated 12.05.2000.

The stand taken up by the Committee is that the owners carved out plots providing some area for the lanes and the Committee only made those lanes pucca and as such the Committee is not liable to pay any compensation to the land owners. There is no evidence prima facie on the record that the land was given to the Committee by the various owners for making the lanes pucca. Rather the Committee has utilized

this land and without payment of any compensation to the land owners. Therefore, the direction dated 12.05.2000 was given to the Committee.

Dismissed."

[7]. Thereafter, Municipal Committee/Council filed Special Leave Petition No(s).9320-9321 of 2001 which was converted in Civil Appeal No(s).2027-2028 of 2002. The Hon'ble Supreme Court set aside the impugned order dated 12.05.2000 passed by the High Court and remitted the case to the High Court for deciding the regular second appeal in terms of Section 100 CPC.

[8]. Thereafter, vide order dated 23.12.2008, the High Court decided the Regular Second Appeal No.1872 of 2000 and directed the Municipal Committee/Council to assess the compensation under Section 224 of the Punjab Municipal Act, 1911 and further to pay the compensation. It was further held that some portion of the land belonging to the plaintiffs/respondents No.1 and 2 has been utilized for carving out streets by the Municipal Committee/Council. Plaintiffs were held entitled to compensation. Municipal Committee/Council was also directed to implement the scheme within six months from the date of order and to pay the compensation to respondents No.1 and 2 as per provisions of Land Acquisition Act, 1894.

[9]. Municipal Committee/Council again preferred SLP (Civil) No.21854 of 2009 against the order dated 23.12.2008 passed by the High Court. Vide order dated 17.08.2009 passed by the Hon'ble Supreme Court, delay was condoned and notice was issued to the

respondents in SLP. The aforesaid SLP (Civil) No.21854 of 2009 was dismissed by the Hon'ble Supreme Court on 04.03.2011. Even review application was filed by the Municipal Committee/Council against the order dated 04.03.2011 passed by the Hon'ble Supreme Court.

[10]. On 13.04.2011, a representation was filed by the legal representatives of respondents No.1 and 2 before the Deputy Commissioner, Ferozepur for initiating acquisition proceedings in compliance of order dated 23.12.2008 passed by the High Court. It was specifically mentioned therein that despite repeated requests made by the plaintiffs to the Municipal Committee/Council, no acquisition proceedings in compliance of order dated 23.12.2008 passed by the High Court were initiated by the Municipal Committee/Council. Deputy Commissioner wrote a letter to Sub Divisional Magistrate, Jalalabad and Executive Officer, Municipal Council, Jalalabad vide memo No.766/DRA/LAC dated 29.04.2011 for immediate action and for submitting the report after taking necessary Action. This letter is an admitted document between the parties

[11]. Thereafter on 28.07.2011, COCP No.1665 of 2011 was filed against Executive Officer, Municipal Council, Jalalabad, Principal Secretary, Department of Local Bodies and Director, Urban Local Bodies by their names for non-compliance of order dated 23.12.2008 passed by the High Court. The said petition was filed

after 2 years, 7 months from the order dated 23.12.2008, 4 months from the dismissal of SLP dated 04.03.2011 and 2 years, 1 month from 23.06.2009. Notice was issued in the contempt proceedings on 29.07.2011. Respondents therein did not file reply to the contempt petition on number of dates i.e. from 17.10.2011 to 24.05.2012. On 20.07.2012, reply was filed by the Municipal Committee/Council by way of affidavit. In the objections, Municipal Committee/Council submitted that review application filed by the Municipal Committee/Council against the order dated 04.03.2011 passed by the Hon'ble Supreme Court is still pending. In the aforesaid objections, it was submitted that order dated 23.12.2008 passed by the High Court is executable before the executing Court. It was also admitted that the Municipal Committee/Council was directed to assess the compensation and to pay the same. The maintainability of the contempt petition was questioned. On 28.07.2012, an application for execution of order dated 23.12.2008 was filed by respondents No.1 and 2.

[12]. Vide order dated 22.08.2012, High Court directed Director, Urban Local Bodies, Principal Secretary, Department of Local Bodies and Executive Officer, Municipal Committee, Jalalabad to be present in the High Court despite the objections raised by the Municipal Committee/Council with regard to executability of order dated 23.12.2008 passed by the High Court, non-maintainability of COCP and pendency of the review application in the Supreme Court.

[13]. On 06.12.2012, decree holders filed an application to withdraw the contempt petition as they had already filed execution petition before the executing Court. COCP No.1665 of 2011 was ordered to be dismissed as withdrawn vide order dated 07.12.2012. On 30.07.2013, Review Petition No.1114 of 2013 filed by the Municipal Committee/Council against the order dated 04.03.2011 passed by the Hon'ble Supreme Court in SLP (Civil) No.21854 of 2009 was dismissed.

[14]. On 07.08.2013, objections were filed by the judgment debtors in the execution petition. In para Nos.3 and 4 of the objection petition, Municipal Committee/Council approved an amount of Rs.1,98,783/- to be released to the decree holders as compensation. No plea of limitation was taken that the execution was barred by limitation. Decree holders filed reply to the aforesaid objections raised by the Municipal Committee/Council. It was specifically stated that the compensation has to be assessed as per Land Acquisition Act. The decree holders pleaded that the judgment debtors be ordered to take recourse to the provisions of Land Acquisition Act as per order dated 23.12.2008 passed by the High Court and the amount assessed by the Municipal Committee/Council was assessed on the lower side and was not acceptable to the decree holders.

[15] On 23.06.2014, an application was forwarded by the office of Land Acquisition Collector-cum-Sub Divisional Magistrate,

Jalalabad to Deputy Commissioner, Fazilka under Sections 4 and 5 of the Land Acquisition Act for publication of acquired land and payment of compensation of the area which is acquired by the Municipal Committee/Council, Jalalabad in view of order dated 23.12.2008 passed by the High Court.

[16]. On 03.07.2014, Collector-cum-Sub Divisional Magistrate, Jalalabad came present in person and informed the Court of Additional Civil Judge (Senior Division), Jalalabad that a letter regarding publication of notification for acquisition of land in question has already been forwarded to the Director and Deputy Commissioner, Fazilka. Vide order dated 30.10.2014, summons were issued to the Secretary, Department of Local Bodies and Director, Local Government Punjab by the executing Court, directing them to come present in person and inform the Court about the steps taken by them for publication of notification for acquisition of land.

[17]. Thereafter, on 19.09.2015, CR No.8596 of 2014 was filed by Municipal Committee/Council, Jalalabad against the order dated 30.10.2014 which was disposed of by the High Court by passing the following order:-

"The dispute between the parties was with regard to land of respondent Nos.1 and 2, which had been utilized for carving of a street under the Building Scheme. Their suit was dismissed by the trial Court vide judgment and decree dated 21.12.1993. Appeal against the said judgment was also

dismissed on 19.11.1999. RSA No.1871 of 2000 filed by Bimla Devi and Harmishan Lal was allowed vide Annexure P-5 by giving direction to the Municipal Committee-Petitioner to implement the Building Scheme in letter and spirit. SLP No.21854 of 2009 against the decision was dismissed by the Hon'ble Supreme Court on 04.03.2011.

Keeping in view that dispute between the parties has attained finality, the impugned order dated 30.10.2014 is modified by giving directions to the trial/executing Court to accept the affidavit submitted by the Secretary or Director, Local Government, Punjab, explaining the steps being taken for the publication of notification for acquisition of land in dispute.

Disposed of accordingly. “

[18]. Thereafter, on 07.01.2016, Deputy Secretary, Department of Local Government issued memo No.8/3/2014-5LG3/661846/1 dated 07.01.2016 to the District Collector, Fazilka on the subject of execution application in the Court of Additional Civil Judge (Senior Division), Jalalabad, directing to assess the compensation to be paid to the decree holders under Section 224 of Punjab Municipal Act, 1911 in the manner provided by the Land Acquisition Act, 1894 and to intimate the same to the Municipal Council, Jalalabad who was further directed to pay the compensation of the utilized land to the decree holders as assessed.

[19]. On 12.01.2016, affidavit was filed by the Secretary, Local Government Punjab before the executing Court stating that the

District Collector had been directed to assess the compensation under Section 224 of the Punjab Municipal Act, 1911 in the manner provided by the Land Acquisition Act, 1894 and Municipal Council, Jalalbad has also been directed to pay compensation to the decree holders.

[20]. Even after happenings of the aforesaid events, the petitioner/Municipal Committee/Council filed an application dated 07.05.2019 for dismissal of execution petition on the ground of limitation that execution petition was filed after 7 years from the date of filing it.

[21]. Learned counsel for the petitioner seeks to rely upon doctrine of merger as has been held by the Hon'ble Apex Court in **Kunhayammed and others Vs. State of Kerala and another, (2000) 6 Supreme Court Cases 359, Chandi Prasad and others Vs. Jagdish Prasad and others, (2004) 8 Supreme Court Cases 724 and Khoday Distilleries Limited (now known as Khoday India Limited) and others Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (under liquidation) represented by the Liquidator, (2019) 4 Supreme Court Cases 376** to contend that filing of execution petition on 28.07.2012 was beyond limitation and the petitioner can rake up the plea of limitation even at this stage in terms of Article 135 of the Limitation Act.

[22]. As against this, learned Senior counsel for respondents No.1 and 2 placed reliance upon **Syed Taimur Ali Shah Vs. Har**

Deo Prasad, 1960 AIR (Allahabad) 375, LR's of Hanuman Vs. Dhanraj and another, 2011(55) RCR (Civil) 564 (Rajasthan), Sridhar Upadhya Vs. Lakshmi Prasad, 1953 AIR (Allahabad) 106, Smt. Shanti Devi Vs. Gurdas Ram and others, 1985(1) CurLJ 342 and Nalakath Sainuddin Vs. Koorikadan Sulaiman, 2002(3) RCR (Civil) 618 and contended that the acknowledgement of the claim made by the State would further extend the period of limitation and fresh period of limitation would start from that date.

[23]. Perusal of order dated 19.09.2015 passed by the High Court would show that the steps taken by the Department in acquiring the land in question were acknowledged and the revision petition was disposed of. Petitioner/Municipal Committee/Council raised no objection with regard to limitation in the aforesaid revision petition.

[24]. It can be appreciated from the record that no plea of limitation was ever raised by the petitioner in the objections filed in the execution petition or even in CR No.8596 of 2014 which was disposed of by the High Court, wherein entitlement of the decree holders was endorsed. Approval of an amount of Rs.1,98,783/- by the petitioner/Municipal Committee/Council was an acknowledgment of the entitlement of the decree holders. The proceedings undertaken before the executing Court wherein affidavits were filed by the officers of the Local Government Punjab are indicative of the fact that the entitlement of the decree holders was accepted in

furtherance of the order passed by the High Court on 23.12.2008, which was upheld by the Hon'ble Apex Court on 04.03.2011.

[25]. Even if, right to property is no more a fundamental right, but still in terms of Article 300-A of the Constitution of India, it is a legal/constitutional right. The Land Acquisition Act, 1894 gives sweeping legal powers to Government to acquire land for public purposes. Public purpose is a pre-condition for deprivation of a person from his property under Article 300-A of the Constitution of India. The right to claim compensation is also inbuilt in that Article and when a person is deprived of his property, the State has to justify the grounds which may depend upon the scheme of Land Acquisition Law, Legislative Policy and other related factors. Right to acquire, hold and dispose of property has ceased to be a fundamental right under the Constitution of India, but it is only a Constitutional right and no person can be deprived of his property save by the authority of law. Article 300-A of the Constitution of India ensures that a person cannot be deprived of his property merely by an executive fiat. This right can be curtailed, abridged or modified by the State only by exercising its legislative power. There cannot be any deprivation of property without law and such an executive foundation without being backed up by law is not constitutionally valid. Reference can be made to **State of Mysore Vs. KIC, Adiga, AIR 1976 SC 853** and **Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd., AIR 2007 SC 2458.**

[26]. Perusal of the aforesaid established facts on record would show that till 12.01.2016, the officers of the Local Government Punjab took the stand before the executing Court by way of filing affidavits that the District Collector has been directed to assess the compensation to be paid to the decree holders under Section 224 of the Punjab Municipal Act, 1911 in the manner provided by the Land Acquisition Act and Municipal Committee/Council has also been directed to pay the compensation of the utilized land to the decree holders. All of sudden on 07.05.2019, petitioner moved an application for dismissal of the execution petition without making any payment to the decree holders.

[27]. If the facts and circumstances of the case are appreciated in the context of acknowledgement of the claim of the decree holders made by the State before the executing Court on 07.08.2013, 23.06.2014, 03.07.2014, 30.10.2014, 07.01.2016 and 12.01.2016, it would be crystal clear that no plea of limitation can be entertained at this stage. The conduct of the petitioner is found to be malicious and needs to be curbed at this juncture. The land of the proprietors cannot be snatched in the manner as proposed by the petitioner. On earlier occasion, officers of the Government have time and again undertook to assess compensation as per Land Acquisition Act. Communication addressed *inter se* between the Departments is indicative of the fact that the entitlement of the decree holders was endorsed from time to time. The facts and

circumstances of the case are not such that would give rise to any such consideration on the alleged plea of limitation by the petitioner which is nothing but a *mala fide* and evil design of the petitioner to deprive the decree holders from their lawful entitlement of compensation in consonance with their legal right under Article 300-A of the Constitution of India.

[28]. The Concept of Finality of Judgement has been explained by the Hon'ble Apex Court in **Indian Council for Enviro-Legal Action vs. Union of India and others., 2011(3) R.C.R. (Civil) 779.** The maxim '*interest Republicae ut sit finis litium*' is to the effect that the litigation must end after a long hierarchy of remedies at some stage. It is necessary to put a quietus. It is rare that in an adversarial system, despite the judges of the highest court doing their best, one or more parties may remain unsatisfied with the most correct decision. Opening door for a further appeal could be opening a flood gate which will cause more wrongs in the society at large at the cost of rights. The conclusion is that the controversy between the parties must come to an end at some stage and the judgment of the higher court must be permitted to acquire finality. It would be improper to allow the parties to file application after application in the endless process. Finality of judgment is absolutely imperative and great sanctity is attached to the finality of the judgment.

[29]. Allowing the parties to reopen the concluded judgments on the basis of some untested material would be an abuse of

process of law and the same would have far reaching adverse consequences on the administration of justice. A settled thing should not be allowed to be unsettled. The judgment passed by the Hon'ble Apex Court is not amenable to the judicial review that too at the stage of execution on the basis of some material which was never the subject matter of substantive litigation upto the Hon'ble Apex Court. Even correctness of the decision on merits after it has become final upto the Hon'ble Apex Court cannot be questioned by invoking Article 32 of the Constitution of India. The principle of finality of litigation is based on high principle of public policy. It is equally important to prevent unscrupulous litigant from taking undue advantage through the process of the Court. It is an onerous duty and obligation of the Court to ensure undue enrichment is not drawn by the losing party by exercising the process of the Court, even after finality of litigation upto the Hon'ble Apex Court. While curbing the aforesaid tendency, the Court would be fully justified in imposing punitive costs where legal process has been abused. Doctrine of *stare decisis* is very valuable principle of precedent which cannot be departed in the ordinary circumstances. The view expressed by the Hon'ble Apex Court in **Manganese Ore (India) Ltd. vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur (1976) 4 SCC 124** and **Green View Tea & Industries vs. Collector, Golaghat and another, 2002(2) R.C.R. (Civil) 362** can be relied in the aforesaid context.

[30]. The attempt to re-argue the case which has been finally decided by the higher Court is a clear abuse of process of law regardless of principles of *res judicata*. The Court should not be hampered by any technical rule and interpretation at the time of applying principles of *res judicata*. Doctrine of *res judicata* is not technical doctrine, but a fundamental principle which sustains rule of law in ensuring finality in litigation. Therefore, the aforesaid principle has a universal application and is based on the principle which means that it is in the interest of the State that there should be an end to the litigation. No one should be vexed twice in the litigation for one and the same cause. Even the party can be bound down by constructive *res judicata* i.e. an issue which was known to a party not raised in proceedings. The issue cannot be raised in subsequent proceedings, the doctrine of constructive *res judicata* will apply. While applying the principle of *res judicata*, the Court should not be hampered by any technical rule of interpretation. The principle of law highlighted by the Hon'ble Apex Court in **M. Nagabhushana vs. State of Karnataka & Others, 2012(1) R.C.R. (Civil) 807** can be relied.

[31]. Evidently, the land of the decree holders was utilized by the Municipal Committee/Council in the year 1979 without any process of acquisition.

[32]. In view of conduct of the petitioner, this Court finds that the action of the petitioner besides being illegal is malicious which needs to be curbed by dismissing this revision petition with costs.

[33]. In view of above, this revision petition is dismissed with costs of Rs.50,000/- to be paid to respondents No.1 and 2/deGREE holders. In the event of non-payment of costs, the same shall be recovered as arrears of land revenue.

(RAJ MOHAN SINGH)
JUDGE

19.11.2019
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No