

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

CR-4635-2019(O&M)

Date of decision:-2.11.2019

Nirmal Singh through LR Gurmeet Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.J.S. Jaidka, Advocate and
Mr.Pankaj Jain, Advocate
for the petitioner.

Mr.Harkesh Kumar, AAG, Haryana.

H.S. MADAAN, J.

This revision petition is directed against the order dated 8.7.2019 passed by Additional District Judge, Panchkula vide which four execution applications titled “Nirmal Singh son of late Shri Ishar Singh deceased through LR Gurmeet Singh son of late Shri Nasib Singh Versus State of Haryana”, “Nirmal Singh son of late Shri Ishar Singh deceased through LR Gurmeet Singh son of late Shri Nasib Singh Versus State of Haryana”, “Dalip Singh Versus State of Haryana” and “Mehar Singh Versus State of Haryana”, which were consolidated vide order dated 7.12.2013 by the then Additional District Judge, Panchkula, were disposed of and old case bearing

No.497 of 2010 titled as “Nirmal Singh Versus State of Haryana” was treated as main reference.

Briefly stated, the facts of the case are that Ishwar Singh son of late Sh.Rellu had landed property at village Judian, Tehsil and District Panchkula; after his demise, his estate devolved upon his four sons, namely S/Sh.Nasib Singh, Nirmal Singh, Dalip Singh and Mehar Singh; the said land was acquired; a reference under Section 18 of the Land Acquisition Act, 1894 was filed by all the four brothers and learned Additional District Judge, Ambala vide award dated 10.9.1988 awarded a sum of Rs.1.50 lakhs per acre as compensation for the acquired land. Still feeling dissatisfied all the four brothers had brought a RFA before the High Court seeking enhancement of compensation and vide order dated 22.2.2010 passed in that RFA No.217 of 1989, this Court has enhanced the compensation @ Rs.250/- per square yard.

An execution was filed by Nirmal Singh son of Ishwar Singh through Gurmeet Singh son of late Sh.Nasib Singh for himself as well as for Dalip Singh and Mehar Singh for payment of compensation amount on the basis of judgment and decree dated 6.2.1984 passed by Sub Judge Ist Class, Kharar in Civil Suit No.178 of 22.7.1983. During pendency of the execution, objections were filed by Mehar Singh son of Ishwar Singh alleging that Nasib Singh had died on 10.2.2010, Dalip Singh on 23.8.2010 and Nirmal Singh

on 6.1.2010. Objector Mehar Singh had filed a separate execution for his share and that of Dalip Singh on the basis of natural succession since Dalip Singh had died unmarried and issueless leaving behind Mehar Singh as his only living brother. The objections were contested by Gurmeet Singh contending that Mehar Singh had no right in view of the judgment and decree dated 6.2.1984 passed by Sub Judge Ist Class, Kharar, which was based upon compromise between four brothers Nasib Singh, Nirmal Singh, Mehar Singh and Dalip Singh. Both Dalip Singh and Nirmal Singh were unmarried and issueless. Dalip Singh was residing with Mehar Singh and Nirmal Singh was residing with Nasib Singh. Both Nasib Singh and Nirmal Singh were served by Gurmeet Singh son of Nasib Singh and pleased with the services rendered by him, they had bequeathed their properties including a right to receive the compensation of acquired land in favour of Gurmeet Singh by executing a Will dated 12.6.2007, in that way Gurmeet Singh was the only LR and successor of Nirmal Singh son of Ishwar Singh; on the basis of judgment and decree dated 6.2.1984 passed by Sub Judge Ist Class, Kharar only Nasib Singh and Nirmal Singh were owners in possession of the land at village Judian and on acquisition of the said land only they and their LRs are entitled to receive the entire compensation to the complete exclusion of the objector because Nasib Singh and Nirmal Singh had relinquished their shares in the land of Behlan Khanpur,

Kharar in favour of the objectors Mehar Singh and Dalip Singh in lieu of relinquishment of share of Mehar Singh and Dalip Singh in the acquired land of Judian and on the basis of that compromise the judgment and decree dated 6.2.1984 was passed. He prayed that objection petition be dismissed and compensation lying in the name of Mehar Singh and Dalip Singh be paid to him.

Ranjit Singh had also filed objections contending that on the basis of compromise arrived at between the four brothers, Nasib Singh and Nirmal Singh were owners in possession in equal shares of the acquired land of 8 kanals 9 marlas and Dalip Singh and Mehar Singh were not entitled to get any share in the compensation. Nasib Singh had died leaving behind Ranjeet Singh, Gurmeet Singh as his sons, Surinder Kaur, Amarjit Kaur and Jaswinder Kaur – daughters and Pritam Kaur as widow and upon death of Nasib Singh, a family settlement was arrived at between Ranjit Singh and Gurmeet Singh on 7.4.2010, which was duly endorsed and signed by all the legal heirs of Nasib Singh and according to which both the sons were entitled to receive the compensation; that Gurmeet Singh had concealed the fact regarding family settlement while moving an application for impleading LRs of Nasib Singh and in terms of family settlement dated 7.4.2010, Ranjit Singh objector and Gurmeet Singh, both sons of Nasib Singh were entitled to receive compensation of the acquired land to the exclusion of other legal

heirs of Nasib Singh.

Gurmeet Singh had resisted those objections setting up registered will dated 2.7.2007 by Nasib Singh in his favour contending that he alone was entitled to get the compensation and the alleged family settlement was a result of fraud, coercion, threat etc. because Pritam Kaur mother of the objector and Gurmeet Singh threatened to commit suicide.

For proper adjudication of the controversy, learned Additional District Judge, Panchkula framed following issues:

1. Whether there is inter se dispute between LRs of Nasib Singh as one Gurmeet Singh is claiming himself to be the only legal heir of Nasib Singh and Nirmal Singh on the basis of Will dated 2.7.2007 and 12.6.2007.
2. Whether Nasib Singh and Nirmal Singh were executed valid and genuine registered Wills dated 2.7.2007 and 12.6.2007 respectively in favour of Gurmeet Singh? OP Gurmeet Singh.
3. Whether any family settlement was arrived amongs the legal heirs of Nasib Singh on 7.4.2010? OP Ranjit.
4. Relief.

The parties were afforded adequate opportunities to lead their evidence.

After hearing arguments, the Court came to the conclusion that the compensation regarding acquisition of land at

village Judian has to be disbursed to all the four brothers, namely, S/Sh. Nirmal Singh, Nasib Singh, Dalip Singh and Mehar Singh, all sons of Ishwar Singh for the following reasons:

- (i) The alleged compromise judgment and decree dated 6.2.1984 Ex.A4 and Ex.A5 was passed subsequently after the issuance of notification under Section 4 of the Land Acquisition Act on 27.8.1981.
- (ii) Admittedly no mutation on the basis of the alleged compromise decree dated 6.2.1984 was sanctioned regarding Judian land because the same was under the acquisition and as per jamabandi Ex.A16 the land remained in the name of four brothers.
- (iii) The award was passed by Land Acquisition Collector on 14.8.2985 and dissatisfied with the amount of compensation awarded to them, all the four brothers had filed a reference under Section 18 of the Land Acquisition Act before District Judge, Ambala, which was assigned to Additional District Judge, Ambala; it was decided on 10.9.1988, then all the four brothers had filed RFA No.217 of 1989 in the High Court seeking enhancement of compensation and the RFA was decided on 22.2.2010; however this compromise decree was not brought to the notice of any of the authority or Court; although RFA had been filed by Nasib Singh for himself and as

attorney of Dalip Singh and Mehar Singh and he had received the compensation for himself and on behalf of Dalip Singh and Mehar Singh but that by itself does not prove the case of the objector. The High Court had also decided the RFA in favour of all the four brothers.

(iv) Gurmeet Singh appearing as AW1 had admitted that no petition under Section 30 of the Land Acquisition Act was filed and decree passed by the Court at Kharar was not mentioned in the reference Court or before the High Court.

(v) It has not been clarified that the land acquired at village Judian was in fact the land, which was the subject matter of compromise decree passed by the Civil Court at Kharar.

(vi) The Will Ex.A11 dated 2.7.2007 and Will Ex.A12 dated 12.6.2007 were executed by Nasib Singh and Nirmal Singh, respectively in favour of Gurmeet Singh, who had claimed compensation qua their shares. There is nothing on record to show that those wills were not genuine or deserved to be discarded.

(vii) The family settlement Ex.RW2/D dated 7.4.2010 was relied upon by Ranjit Singh brother of Gurmeet Singh, who claimed that he along with Gurmeet Singh was entitled to equal share of compensation. However, when statement of Ranjit Singh was recorded as RW2, he admitted in his cross examination that the

aforesaid family settlement Ex.RW2/D remained unimplemented and other properties as per family settlement were also not transferred in terms of settlement. He also admitted that Gurmeet Singh did not receive any amount from him as per family settlement. RW3 Surinder Kaur daughter of Nasib Singh and sisters of Ranjit Singh and Gurmeet Singh admitted that family settlement was never implemented. Thus on the basis of such family settlement Ranjit Singh cannot claim equal share in the compensation of his father Nasib Singh.

In light of such observations, the Executing Court concluded that as far shares in compensation of Nirmal Singh and Nasib Singh are concerned, Gurmeet Singh is entitled to receive the same. Since Dalip Singh died unmarried and issueless Mehar Singh being his brother is entitled to receive the share of Dalip Singh besides his own share.

The order passed by the Executing Court is well reasoned, based on proper appraisal of evidence and correct interpretation of law and does not suffer from any illegality or infirmity much less apparent on the face of it. The same is not perverse or arbitrary. It has certainly been not passed in violation of settled legal principles.

Though learned counsel for the revisionist has contended

that under Section 47 CPC, the Executing Court is required to determine all questions arising between the parties to the suit in which the decree was passed or between their representatives and relating to the execution, discharge or satisfaction of the decree, which has not been done in the present case. But I find that this argument advanced by learned counsel for revisionist is devoid of merit. The Executing Court has dealt with all the objections and pleas taken by the objectors and it cannot be said that any of the objection has been rejected in a summary manner without considering the same. Of course the Executing Court was to see the conduct of the parties also while considering the objections raised on behalf of the objectors. The objections can certainly be not decided in isolation, rather those are to be considered and adjudicated in light of the facts and circumstances of the case and settled judicial position. The Executing Court has certainly done so and no lacuna in that regard can be found to be there.

Learned counsel for the revisionist has further submitted that the Executing Court has not taken into view Section 44 of the CPC dealing with partition of estate or separation of share. I fail to find any logic in such contention. The dispute between the parties was with regard to apportionment of share in the compensation amount awarded on account of acquisition of their land. The Executing Court had considered all the aspects of the case including

the objections raised by some of the claimants on the basis of wills, family settlement, decree of the Civil Court etc. and the grouse of the revisionist that their objections have not been dealt with properly is unfounded.

Finding no merit in the revision petition, the same stands dismissed.

2.11.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**