

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2100 of 2018

Date of Decision: 12.05.2020

Union of India

... Petitioner(s)

Versus

Nirmal Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Arun Gosain, Advocate
for the petitioner(s).

Mr. K.S.Sidhu, Advocate
for the respondents.

Anil Kshetarpal, J.

This revision petition has been filed under Article 227 of the Constitution of India praying for setting aside the impugned orders dated 12.12.2016, 02.12.2017 and 06.12.2018 passed by the learned Executing Court.

Some facts are required to be noticed. The Union of India requisitioned 1968.55 acres of land in villages Daya Kalan and Talwandi Mallian under the Defence of India Act vide order dated 04.04.1963. Thereupon, the possession of land was taken over on the next day i.e. 05.04.1963. The State of Punjab acquired the said land under the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as “the 1952 Act”) for defence purpose. The Special Land Acquisition Collector proposed compensation of the acquired land at a particular rate. The land owners, who were deprived of the lands, prayed for

reference being not satisfied with the amount of compensation determined by the Special Land Acquisition Officer. Thus, the references were made to the learned Additional District Judge, Ferozepur exercising the powers of Arbitrator. The Arbitrator decided 40 references vide award dated 11.02.1985. The Arbitrator determined the compensation separately while dividing the land in various categories *Chahi*, *Barani* and *Banjar Jadid*. The compensation was enhanced. In addition thereto, the land owners were held entitled to solatium @15% and interest @ 6%. The land owners prayed for enhancement by filing appeals before this Court, which were disposed of. The main judgement was passed in F.A.O. No. 427 of 1985 titled as “Atma Singh and others v. Punjab State and another” decided on 07.05.1986. This Court re-determined the market value of *Chahi* and *Nahri* qualities of land at ₹ 16,000/- per acre, whereas the compensation qua the *Barani* land was revised to ₹ 11,000/- per acre. The land owners were also found entitled to solatium @ 30% and interest @ 9% per annum from the date of acquisition till the expiry of one year and thereafter, @ 15% per annum till the entire compensation was paid. It appears that the aforesaid judgements passed by this Court have become final.

At one stage, the learned Executing Court held that the judgement passed by this Court directing for payment of solatium @ 30% and the interest @ 9% per annum from the date of acquisition till the expiry of one year and thereafter, @ 15% per annum till the payment of entire compensation, is nullity. However, this Court, in ***Civil Revision No. 1604 of 1999*** titled as “***Atma Singh and others v. Punjab State and another***” decided on **07.02.2013** and other connected cases, held that the learned

Executing Court cannot traverse beyond the judgement passed by the Court. The operative part of the order passed by this superior Court is extracted as under:

“3. It is a fundamental precept of law that an Executing Court cannot traverse beyond the judgement of the trial Court as modified in the appellate forum and it is bound to execute it in execution in the manner that the award was passed. If the award provided for interest and solatium, it shall be incompetent for an Executing Court to decide on the correctness of the judgement of this Court passed in **FAO No.427 of 1985**. If the issue of solatium and interest cannot be reopened, then solatium itself is a component of compensation for the land and, therefore, interest is leviable on solatium also. The entire amount of compensation will have to be treated as one block and interest has to be calculated on the same. The reasoning adopted that the interest could not be claimed on solatium, therefore, is not correct. When a decree provides for interest and costs and some payments have been made by a judgement debtor without any specific direction as to appropriation, the claimants shall be at liberty to appropriate the payments first towards costs, then towards interest and in the last towards the principal. The manner of appropriation was also justified. The claimants shall be entitled to enforce it in the manner it had done. The claimants are also at liberty to file a fresh memo of calculation at the Executing Court and

seek for a recovery in the manner admissible in law”.

Pursuant to the aforesaid directions, fresh calculations were filed. The Union of India filed reply-cum-objections. Fresh objections were also filed claiming that the judgement passed by this Court is nullity. The learned Executing Court, after considering the objections, has dismissed both sets of objections by a detailed order dated 02.12.2017.

The Union of India has basically challenged the aforesaid detailed order passed by the learned Executing Court along with certain consequential orders.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the paper-book.

Learned counsel appearing for the Union of India has submitted that under the 1952 Act, the Court has no power to award solatium and interest. He relies upon judgement passed by the Hon'ble Supreme Court in *Union of India v. Chajju Ram (2003) 5 SCC 568*, *Union of India v. Hari Krishnan Khosla 1993 Suppl. (2) SCC 149*, *Civil Appeal No. 3568 of 2005 (Sarup Singh and Another v. Union of India and Another*, decided on *25.11.2010*) and *Union of India v. Sube Ram and Others (1997) 9 SCC 69*.

On the other hand, learned counsel for the respondent-landowners has submitted that the learned Executing Court has correctly dismissed the objections as the Executing Court cannot go beyond the judgement/decree passed which has become final. He further submitted that in view of the judgement passed in *Civil Revision No. 1604 of 1999* titled as *“Atma Singh and others v. Punjab State and another”* decided on

07.02.2013, the Union of India is estopped from raising the plea and in fact, the aforesaid issue is barred by doctrine of *res judicata* as it has already been rejected in the previous round.

This Court has analysed the arguments of learned counsel for the parties.

As regards reliance placed by learned counsel to the judgements of *Hari Krishnan Khosla* and *Chajju Ram (supra)*, it will be noted that there cannot be any dispute with the aforesaid proposition of law enunciated by the Hon'ble Supreme Court. However, in the present case, the question which arises for determination is different. The judgements passed in the cases of *Hari Krishnan Khosla* and *Chajju Ram (supra)* could be relied upon by the petitioner-Union of India before the Appellate Court in the year 1985 when appeals were decided. Now at this stage, the Union of India cannot claim that such award by this Court vide judgement dated 07.05.1986 is erroneous and therefore, the learned Executing Court should treat the same as nullity. The word "nullity" is not synonymous with the word "erroneous". The word "nullity" or the judgement being without jurisdiction are different concepts were compared with orders suffering from errors. The word "nullity" has been defined in Black's Law Dictionary 10th Edition as under:

"Something that is legally void or the fact being legally void".

The word "void" means "of no legal effect".

In view of the aforesaid facts, this Court while examining the correctness of the order passed by the learned Executing Court does not find it appropriate to opine about the judgement passed in the year 1986,

particularly when it has again been reiterated in 2013.

The next argument of learned counsel is with reference to the judgements passed in the cases of **Sarup Singh** and **Sube Ram** (*supra*). The aforesaid judgements do not help petitioner-Union of India as in both the cases, the Hon'ble Supreme Court was examining the question altogether in different context whether after the final judgement has been passed by the Court, the same Court can entertain applications under Section 151, 152 & 153 CPC and grant relief of enhanced solatium and interest as per the amended Land Acquisition Act, 1894 or not. In the aforesaid context, the Hon'ble Supreme Court held that such orders passed by the Courts, while entertaining applications under Sections 151, 152 & 153 CPC, are without jurisdiction and therefore, nullity.

As noticed above, the position in this case is entirely different. Although learned counsel for the respondent has relied upon a judgement passed by the Hon'ble Supreme Court in **Dilawar Singh and Others v. Union of India and Others 2010 (14) SCC 357** to contend that under the 1952 Act, the Hon'ble Supreme Court has permitted award of solatium and interest as per the revised Land Acquisition Act, however, on careful reading thereof it is apparent that the Hon'ble Supreme Court has not held that the solatium and interest can be awarded for the acquisition of land under the 1952 Act. However, the Hon'ble Supreme Court has approved the awarding of amount of solatium and interest under different nomenclatures in the facts of each case.

Keeping in view the aforesaid facts, this court is of the considered view that the order passed by the learned Executing Court cannot

be held to be suffering from any error of law. The learned Executing Court was correct in observing that it would not be possible for the Executing Court to go beyond the decree passed which has become final. In view thereof, there is no ground to interfere and hence, the revision petition is dismissed.

(Anil Kshetarpal)
Judge

May 12, 2020
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No