IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13751-2021 (O&M)
Date of decision: 17.08.2021

INDIAN BANK ... Petitioner

Versus

STATE OF HARYANA AND ORS. ... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. KK Goel, Advocate for the petitioner.

Mr. Samarth Sagar, Addl. AG, Haryana.

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<u>ANIL KSHETARPAL, J.</u>

CM No.10463-2021

Allowed as prayed for. Annexures A1 to A3 are taken on record, subject to all just exceptions.

Main Case

Through this writ petition under Article 226/227 of the Constitution of India the petitioner prays for quashing of the order passed by the learned Additional District Judge, Faridabad, on 22.03.2021, while hearing reference petition under Sections 18 and 30 of the Land Acquisition Act, 1894 (in short '1894 Act').

On 27.07.2021, learned counsel representing the petitioner was requested to examine whether the petitioner-bank can file an appeal after seeking permission of the Court in order to challenge the impugned order. The petitioner has filed an application i.e. CM No.10463 of 2021

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contending that the appeal is a creation of the statute and unless the right of appeal is specifically provided and the forum thereof is specified, no one has a right to file an appeal.

At the time of hearing, on 12.08.2021, attention of the learned counsel was drawn towards a Larger Bench judgment of the Hon'ble Supreme Court in **Radhey Shyam and anr. Vs. Chhabi Nath and ors., (2015) 5 SCC 423** laying down that remedy of writ petition under Article 226 is not maintainable in order to challenge the correctness of the order passed by the Civil/Criminal Court. However, learned counsel insists that the writ petition is maintainable. Hence, this bench is left with no choice but to proceed further.

From the reading of the impugned order, it is apparent that the Land Acquisition Collector had sent a reference under Section 18 and 30 of the 1894 Act along with a sum of Rs.6,74,281.08 vide cheque No.1013621 dated 05.06.1990 drawn on Union Bank of India, Faridabad. The Additional District Judge, Faridabad, vide order dated 09.09.1991 directed to the concerned Court official to deposit the said amount with some nationalized bank. The aforesaid amount was received by the District Treasury office, Faridabad, on 19.09.1990 vide RD No.626. The then Court official in compliance with the order issued Form C of Rs.6,74,281.08 in favour of the Allahabad Bank on 26.09.1991. On the same day, the District Treasury officer issued Form C in favour of the Allahabad Bank, main branch, NIT, Faridabad. In the first round, the petitions were decided by the learned Additional District Judge, on 11.10.1990, however, the High Court vide

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judgment dated 01.09.2009 set aside the judgment passed by the learned Additional District Judge and remitted the matter for fresh decision. Thereafter, once again, the Court of the learned Additional District Judge, decided the petitions on 18.09.2018. On receipt of applications for issuance of Form C, the report of the Court official was called for. Thereafter, it was found that no record in respect of the fixed deposit receipt of the aforesaid amount is available with the Court official. Thus, the Court ordered the Court official as well as officials of the bank to find out the details of the fixed deposit receipt and allocation of the aforementioned amount. The Court vide order dated 26.09.2019 informed the office of the Finance Minster, Union of India, Governor, RBI and Chairman, State Bank of India and Chairman, Allahabad Bank. The presiding Judge, also forwarded the matter to the learned District and Sessions Judge, on 21.03.2020. The District Judge, directed another Additional District Judge, to conduct a fact finding inquiry. On 15.03.2020, the Additional District Judge submitted a report to the District Judge that the amount was deposited with the Allahabad Bank, however, no record thereof was available either in the Court or in the Bank. It was noticed that the Allahabad Bank has merged into the Indian Bank. The officials of the Bank expressed their inability by taking a stand that the record has been destroyed, as subsequently, their branch was computerized.

The District Judge on the receipt of the report directed the Court concerned to proceed in accordance with law. The Presiding Judge, after giving an opportunity to the Manager, Indian Bank, to make a

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statement and seeking information from various banks about the rate of interest has directed the petitioner bank to pay the amount of Rs.1,01,67,724/-. The petitioner assails the correctness thereof.

Heard learned counsel for the petitioner at length and with his able assistance perused the paper book.

Learned counsel relies upon the judgment passed in **Satpal Singh and another Vs. Amarjit Kaur and others, RFA No.413 of 2018, decided on 12.02.2018** to contend that the petitioner does not have remedy of appeal or revision under Article 227. This Bench has carefully read the aforesaid judgment. It is apparent that in the said case, the learned Additional District Judge, Patiala, had decided the reference under Section 3H(4) of the National Highways Act, 1956 which enables the competent authority to refer the dispute with regard to apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, as per the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The Bench held that since, against the judgment passed by the Civil Court, there is no provision to file appeal, as a result, the appeal is not maintainable. In that context, the Bench relied upon a previous judgment passed in **Bhoop Singh and others Vs. Kuria and others, (2015) 4 PLR 632.** There is no dispute with the aforesaid proposition. In the present case, the acquisition is under the 1894 Act. Section 54 of the 1894 Act makes a provision for filing appeal against any proceedings under the Act to the High Court or from any part of the award. Section 54 reads as under:-

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> Appeals in proceedings before Court. - Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to 4[the Supreme Court] subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof.]

Section 54 is only subject to the provisions of the Code of Civil Procedure, 1908. Sections 18 and 30 of the 1894 Act provide that any interested person can apply to the Land Acquisition Collector for decision either on the determination of the amount or to the measurement of the land or the persons to whom it is payable or the apportionment of the compensation among the persons interested, then the Land Acquisition Collector is required to refer the matter to the Court. As per Section 3(d), the expression 'Court' means a Principal Civil Court of original jurisdiction. As per Section 3(17) of the General Clauses Act, 1897, the District Judge, shall be the Judge of a Principal Civil Court of original jurisdiction. Thus, obviously, the matter is required to be referred to the District Judge, who may himself proceed to adjudicate or assign to any of the District Judge subject to orders passed by the Government. Moreover, the petitioner has a remedy of filing revision under Article 227 of the Constitution of India

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which enables the High Court to exercise its supervisory jurisdiction while examining the accuracy the orders passed by the Court subordinate to it.

Learned counsel for the petitioner contends that since the Indian Bank is not a party to the proceedings, consequently, it can neither file appeal nor revision. In the considered view of this Bench, the argument of learned counsel suffers from a fundamental error. The Court of the Additional District Judge has directed payment to the bank. The bank is aggrieved person. Hence, even if it is not a party, even then, the appeal can be filed by moving an application for permission to file appeal which is not unknown to law. In addition, as noticed, the petitioner has a remedy of filing revision petition.

It is apparent that the Additional District Judge has exercised judicial powers of the Civil Court while passing the order in question. The order passed cannot be said to be an administrative order. Thus, the judicial orders passed by the Civil Court are not open to challenge in the writ petition.

There is another aspect of the matter which needs attention. Previously, Hon'ble Supreme Court held that the orders passed by the Civil/Criminal Court can be assailed by filing writ petition under Article 226 of the Constitution of India and the High Court can, in exercise of its power of judicial review, quash the same. However, a Larger Bench in **Radhey Shyam (supra)**, has conclusively held that the writ petition under Article 226 is not maintainable to assail the correctness judgments/orders passed by the Civil/Criminal Court.

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Keeping in view the aforesaid facts, the writ petition is disposed of with liberty to avail the alternative remedy, if any. The writ petition is not maintainable.

All the pending miscellaneous applications, if any, are also disposed of.

17.08.2021 **(ANIL KSHETARPAL)**
ashok **JUDGE**

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

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