

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

CWP-10886-2022 (O&M)
Date of decision: 20.05.2022

Shyama Arora

...Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Salar, Advocate for the petitioner
Mr. Harsh Vardhan, AAG, Haryana

ANIL KSHETARPAL, J (Oral)

Admittedly, the petitioner never filed an application under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act'). She claims entitlement to the identical compensation on the ground that another co-sharer filed an application under Section 18 of the 1894 Act, which was allowed by the Reference Court. The amount was further enhanced by the High Court in the Regular First Appeal. It is not in dispute that there was no application for reference by the other co-sharer on behalf of the petitioner. Learned counsel representing the petitioner relies upon **A.Vishwanatha Pillai and others vs. The Special Tehsildar for Land Acquisition No.IV and others' (1991) 4 SCC 17.**

In an identical case, in **Shamsher Singh and another vs. State of Haryana and others'** CWP-15100-2021 decided on 10.08.2021, it was held as under:-

“The 1894 Act is a complete Code. It grants two opportunities to the land owners to apply for re-determination of the market value of the acquired land after determination by the Land Acquisition Collector. Once the statute makes

adequate provisions, the persons who have slept over their rights, cannot be permitted to avail the extraordinary writ remedy. Furthermore, the application under Section 18 can only be filed if the land owners have not accepted the award. In the present case, it is not clear as to whether the petitioners accepted the award of the Land Acquisition Collector or not. The writ remedy is not for the persons who are not vigilant. It is well settled that ignorance of law is no excuse. Besides, the writ petition suffers from colossal unexplained delay and latches. The acquisition was completed in January, 2004. The Regular First Appeals were decided by the High Court on 06.11.2015, whereas the writ petition has been filed in July, 2021. Thus, there is delay of 17 years.

*It may be noted here that in the context of the entitlement of the co-sharer, to the enhanced compensation, without seeking reference, either under Section 18 or 28A of the Act 1894, the Supreme Court has repelled the claim after examining the matter in the context of Article 14 of the Constitution of India in '**Ramesh Singh (dead) and others vs. State of Haryana and others**' (1996) 4 SCC 469. Para 5 of the judgment reads as under:-*

“5. It is argued by Shri Rohtagi that the petitioners being co-owners, they are entitled to compensation on a parity with other co-owners and the denial thereof is violative of Article 14. We find no force in the contention. Having laid independent claims and sought reference under Section 18, the right and remedy are only as provided under Section 18 or on an appeal under Section 54 but not by way of getting impleaded on the premise of a co-owner. Merely because one of the claimants had got higher compensation, others do not automatically get the same compensation unless the remedies, as provided under the Act, are availed of. One of the remedies under the Act is Section 28-A; if it is available according to law. Determination of higher compensation in favour of some claimants or so-called co-owners and denial thereof to other claimants is not

violative of Article 14 of the Constitution. The subject-matter having been regulated under the provisions of the Act, the right and remedy for higher compensation should be sought and had only under the Act. The principle of equality of Article 14 cannot be extended in that behalf.”

*Similarly, in 'Irshad Ali and others vs. Hazi Abdul Sukhur Mozumdar and others', (1997) 7 SCC 88, a co-sharer sought reference under Section 18 which was decided but he never filed an appeal, whereas the other co-owners filed an appeal and got enhancement. Hon'ble Supreme Court held that such co-owner, who did not file an appeal, has waived his claim and hence, not entitled to the enhanced compensation. Similarly, in 'Ambey Devi vs. State of Bihar and another' (1996) 9 SCC 84 a co-sharer in the land, without filing reference under Section 18, filed an appeal before the High Court. In that context, the Supreme Court held that his appeal was not maintainable unless he has sought reference under Section 18. Similarly, in **State of Haryana vs. Jai Dev**, CR 2811 of 2000 decided on 24.08.2010, the Court after examining the various judgments held that enhanced compensation, without seeking reference under Section 18 or 28A, cannot be paid.*

*It may be noted here that there is one judgment of Supreme Court in **A. Viswanatha Pillai And Ors vs Special Tahsildar For Land** 1991 AIR SC 1966. In this case, some co-sharers have sought reference on behalf of all the other co-sharers. In that context, the Supreme Court held that since some of the co-sharers can file a claim on behalf of others, therefore, the Court awarded the enhanced compensation. However, in this writ petition, the petitioners are claiming the enhanced compensation only on the basis of determination of other land owners. The petitioners claims that such action of the State is in violation of Article 14 of the Constitution of India. In the considered view of this Court, Article 14 cannot be invoked in such circumstances.”*

Thereafter, in CWP-23669-2021 titled as '**Piara Singh vs.**

State of Punjab and another' decided on 07.12.2021, this Court after

examining and analysing various judgments passed by the Supreme

Court including **A.Viswanatha Pillai** 's case (supra) has formed an opinion that in the absence of an application to the Land Acquisition Collector, for referring the matter, either by the applicant or his co-sharer on his behalf, the enhanced compensation cannot be granted. The relevant observations are extracted as under:-

*Learned counsel representing the petitioner has made a serious attempt to convince the court that in **A. Viswanatha Pillai's case (supra)**, the Supreme Court held that the co-sharer can file an execution petition irrespective of the fact whether he filed an application under Section 18 of the 1894 Act. On a careful reading of para 2 of the above cited judgment, it is evident that in the facts of the case the court found that in the reference application made by Venkatachalam, he claims redetermination on behalf of his remaining brothers. In that case, the acquired land was developed by four brothers, who were the owners at the relevant time. The Hon'ble Supreme Court rather has used the expression "they" to stress on the point that the redetermination was sought on behalf of all the co-owners. In those facts, the Hon'ble Supreme court permitted the other co-owners to file the execution petition.*

*As regards judgment passed in **Patiala Improvement Trust through its Chairman's case (supra)**, the Court noted that in the aforesaid case the execution petition had been allowed by the Executing Court. The aforesaid order was challenged by filing a revision petition. The High Court came to conclusion that the Reference Court has already directed that the revised market rate in the peculiar circumstances of the case shall be universally applicable. In those facts, the court dismissed the revision petition.*

In the considered opinion of this Court, the extracted portion of the judgments, have categorically laid down that a co-owner is not entitled to file an execution petition without seeking reference under Section 18 of the 1894 Act."

Dismissed.

The petitioner also claims that she has not been paid compensation as per the award of the Land Acquisition Collector. If that

be so, let her make a representation to the Land Acquisition Collector, who shall pass a speaking order, within one month of the receipt of the application.

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

20.05.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE