

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

Date of Decision:- **July 12 , 2023**

1.

CR-6390-2014 (O&M)

Union of India

...Petitioner
- vs.
- Shamsher Singh & another

...Respondents
2.

CR-6391-2014 (O&M)

Union of India

...Petitioner
- vs.
- Dalal Singh & another

...Respondents
3.

CR-6392-2014 (O&M)

Union of India

...Petitioner
- vs.
- Kirpal Singh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Prateek Mahajan Advocate &
Ms. Saloni Sharma, Advocate
for the petitioner(s) in all cases.

Mr. Man Mohan, Advocate, for the respondents.

HARKESH MANUJA, J.

CM-7167-CII-2015 in CR-6390-2014:
CM-7128-CII-2015 in CR-6391-2014:
CM-7130-CII-2015 in CR-6392-2014:

Applications for seeking exemption from filing certified copy
of Annexure P-4 in respective revision petitions, are allowed as prayed
for, subject to all just exceptions.

CM-7168-CII-2015 in CR-6390-2014:
CM-7129-CII-2015 in CR-6391-2014:
CM-7131-CII-2015 in CR-6392-2014:

Applications for placing on record the calculations in terms
of the principle laid down by Hon'ble Supreme Court in **Gurpreet**

Singh Vs. Union of India, 2008 (2) RCR (Civil) 207 as Annexure P-4 in respective revision petitions, as directed by this Court vide order dated 02.12.2014, are allowed as prayed for, subject to all just exceptions.

MAIN CASE:

1. This order of mine shall dispose of the above revision petitions filed against the impugned orders of Ld. Executing Court; whereby the applications filed by the petitioner under Section 144 and 151 of CPC for recovery of excess amount paid to land-owners have been dismissed. As factual matrix and application of law in all these cases are similar, they are being discussed and decided together. For the sake of convenience facts are being taken from CR-6390-2014 titled as "**Union of India vs. Shamsher Singh & Another**".
2. Briefly stated, facts of the case are that the land measuring 142.26 acres was acquired in Villages Islam Nagar, Damdama and Bhogpur for Group Centre, CRPF, Pinjore vide notification dated 28.5.1985 issued under Section 4 of the Land Acquisition Act, 1894, for short 'the Act'. The award was passed by the Land Acquisition Collector, Kalka on 27.01.1986; whereby he assessed the market value of Barani land @ Rs.31500/- per acre and that of Gair Mumkin land @ Rs.7500/- per acre. The reference was made before the then learned District Judge, Ambala-cum-Reference Court and was decided vide order dated 23.08.1991; whereby he assessed the market value of the land at uniform rate of Rs.65280/- per acre. The award passed by learned Addl. District Judge, Ambala was challenged before High Court by the land-owners as well as the State. However, the appeal filed by the State was dismissed and High Court assessed the market value of the

land @ Rs.92,444/- per acre vide judgment dated 12.08.1999, thereby partly allowing the appeals filed by the landowners. As per the petitioner, in this land acquisition proceedings, land measuring 6 Bighas 7 Biswas belonging to respondent No.1-Shamsher Singh, in Village Bhogpur was acquired. A sum of Rs.5,62,927/-was paid to respondent No.1-Decree Holder (DH) on account of acquisition of his land and a sum of Rs.37,781/-was deposited as TDS with the Income tax Department on the total amount of compensation paid to respondent No.1- D.H.

3. However, as per the calculation of respondent No 1- DH, the compensation paid to him was less by Rs. 2,87,639/- and thus, he filed an execution application dated 12.04.2010 before the Id. Executing Court. In objections filed at the instance of petitioner-Judgment Debtor (JD), it was shown that the last payment was made to respondent No.1 in March 2005 and an excess amount of Rs.2,46,031/- was paid to the decree holder, which is required to be recovered from him and accordingly, an application dated 09.10.2012 was filed under Sections 144 and 151 CPC for restitution / recovery of amount of Rs. 2,46,031 from respondent No 1- DH.

4. Vide impugned order dated 04.12.2013, while the execution application of respondent No 1- DH was dismissed in default, at the same time, application filed at the instance of petitioner for restitution and also for recovery of excess amount was also dismissed as it was found that calculation provided by the petitioner was not tenable as it has to be carried out as per the mandate of Hon'ble Apex Court in **"Gurpreet Singh vs Union of India"** reported as 2008(2) RCR (Civil)

207.

5. Impugning the aforesaid order dated 04.12.2013, learned counsel for petitioner submits that the finding recorded by the learned Executing Court that if calculation of compensation would have been carried out as per the mandate of **Gurpreet Singh's case** (supra), then the amount would have been due towards petitioner is wrong. He further submits that in compliance of order dated 02.12.2014 of this Court, petitioner has brought on record the calculation as per the principles laid down by Hon'ble Supreme Court in **Gurpreet Singh's case** (supra) and a substantial amount can be seen as due from respondent No 1 - DH holder, which is liable to be recovered from him and therefore, the impugned order is liable to be set aside.

6. On the other hand, learned counsel for respondent No. 1-DH though disputes the calculation provided by petitioner, however, submits that excess amount, if any, was paid on account of miscalculation by the officers of petitioner only and there was no misrepresentation on the part of respondent No. 1-DH in this regard. He further submits that the calculation provided by the petitioner was not in consonance with the principles as laid down in **Gurpreet Singh's case (supra)** and in that circumstance, application was rightly rejected. He also submits that even if it is assumed that some excess compensation was paid, it was paid in 2005 and recovery of that amount at this stage would not only be arbitrary and against the equity, but would cause undue hardship to respondent No 1-DH being hit by the principle of delay and latches as well.

7. I have heard learned counsel for parties and gone through the paper-book. I am unable to find any substance in the arguments raised by the learned counsel for the petitioner.

8. Benefit of restitution is available under Section 144 of the Code of Civil Procedure, 1908 and for reference, the same is reproduced hereunder:-

“Section 144:- Application for restitution:-

(1) Where and in so far as a decree [or an order] is [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree [or order] or [such part thereof as has been varied, reversed, set aside or modified]; and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly ⁴ [consequential on such variation, reversal, setting aside or modification of the decree or order].

[Explanation.--For the purposes of sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include,

- (a) where the decree or order has been varied or reversed in exercise of appellate or revision jurisdiction, the Court of first instance;*
- (b) where the decree or order has been set aside by a separate suit, the court of first instance which passed such decree or order.*
- (c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.*

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)."

A perusal of above provision shows that variation or reversal of an order or decree in an appeal, revision or other proceedings or the same being set aside or modified in any suit instituted for the purpose is a *sine-qua-non* for invoking the benefit of restitution. My aforesaid view can also be traced out from the judgment passed by Hon'ble Supreme Court in the case of **Murti Bhawani Mata Mandir Rep. through Pujari Ganeshi Lal (D) through LR Kailash Vs. Rajesh (Ramesh) and others**, reported as 2019 (1) RCR 935. Paragraphs 13 & 14 thereof, which are relevant to the facts of the present case, are reproduced hereunder:-

- "13. In these circumstances, the provisions of Section 144, CPC were not attracted there being no variation or reversal of a decree or order as contemplated by Section 144.*
- 14. The remedy of the first respondent, if any, did not lie in an application for restitution before the executing court under Section 144, CPC. The executing court was justified in declining to entertain the application under Section 144, CPC."*

8. Applying the above proposition of law, the application filed under Section 144 CPC seeking benefit of restitution was not even maintainable. In the present facts, admittedly the regular first appeal filed at the instance of respondent No.1-landowner was decided by this Court vide order dated 12.08.1999, while granting benefit of enhancement. Based upon the same, in an execution filed by

respondent No.1-landowner, the petitioner even released the amount of compensation in the year 2005. The judgment dated 12.08.1999 was final between the parties as the same was never challenged by either of them and thus, it was neither varied; nor reversed in any appeal, revision, suit or any other proceedings. Accordingly, in the absence of there being any variation or reversal of the judgment dated 12.08.1999, post release of the amount of compensation in pursuance thereof in 2005, the invocation of Section 144 CPC at the instance of petitioner, seeking benefit of restitution was not even maintainable.

9. Equally important, an application for seeking relief of restitution is to be treated as an application for execution and thus, governed under Article 136 of the Limitation Act, 1963, with 12 years of limitation as has been held by the Hon'ble Supreme Court in the case of ***Mahjibhai Mohanbhai Barot vs Patel Manibhai Gokalbhai & Ors.***, reported as AIR 1965 SC 1477. Relevant para No.30 thereof, is reproduced hereunder:-

“30. As we have already indicated, there are strong currents of judicial opinion expressing conflicting views on the construction of Section 144 of the Civil Procedure Code. The Madras High Court in Somasundaram v. Chokkalingam, ILR 40 Madras 780 and Venkataraju v. Suryanarayana, ILR 1943 Madras 411, the Bombay High Court in Kurgodigouda v. Ningangouda, ILR 41 Bombay 625 and Hamidalli v. Ahmedali, ILR 45 Bombay 1137 the Patna High Court in Bhaunath v. Kedarnath, ILR 13 Patna 411, the Chief Court of Oudh in Chandika v. Bitai, ILR 6 Luck 448, the Rangoon High Court in Muthukaruppan Chettiar v. Annamalai, ILR 11 Rangoon 275, the High Court of Travancore-Cochin in Kochu Vareed v.

Mariyam, AIR 1952 Travancore Cochin 40, and the Madhya Pradesh High Court in Choudhary Hariram v. Pooran Singh, AIR 1962 Madhya Pradesh 295, held that an application under Section 144 of the Civil Procedure Code was an application for execution of a decree, while it had been held by the High Court of Allahabad in Parmeshwar Singh v. Sitaldin Dube, ILR 57 Allahabad 26 (FB), and other cases the Calcutta High Court in Saraj Bhushan v. Debendranath. ILR 59 Cal 337 and Hari Mohan Dalal v. Parmeshwar Shau, ILR 56 Cal 61, and other cases, the Nagpur High Court in Khwaja Allawali v. Kesharimal, ILR (1947) Nagpur 176, and the Punjab High Court in Mela Ram v. Dharam Chand Amrit Lal, ILR (1958) Punjab 407, that it was not an application for execution. We have gone through the judgments carefully and we have derived great assistance from them. If we are not dealing with each of the cases specifically, it is only because we have practically dealt with all the reasons given by the learned Judges in support of their respective views. We realise that the opposite construction for which the appellant contended is also a possible one; but it ignores the history of the legislation and the anomalies that it introduces. On a procedural matter pertaining to execution when a section yields to two conflicting constructions, the court shall adopt a construction which maintains rather than disturbs the equilibrium in the field of execution. The historical background of Section 144 of the Civil Procedure Code, the acceptance of the legal position that an application for restitution is one for execution of a decree by a number of High Courts, the inevitable adoption of the said legal position by innumerable successful appellants within the jurisdiction of the said High

Courts, the possible deleterious impact of a contrary view on such appellants, while there will be no such effect on similar appellants within the jurisdiction of the High Courts which have taken a contrary view, also persuade its to accept the construction that the application for restitution is one for execution of a decree. We, therefore hold on a fair construction of the provisions of Section 144 of the Civil Procedure Code that an application for restitution is an application for execution of a decree.”

In the present facts, the restitution application filed by the petitioner even becomes barred by limitation, as the same has been filed in October 2012, which came to be more then twelve years after the final determination of compensation done by this Court on 12.08.1999 and thus, could not have been entertained.

10. In view of the discussion made above, finding no illegality or perversity in the orders passed by the Courts below all revision petitions are hereby dismissed as similar factual and legal position prevails in all revision petitions.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 12, 2023
sanjay

(HARKESH MANUJA)
JUDGE

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