IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7308-2018 (O&M)
Date of Decision: October 03, 2023

FOOD CORPORATION OF INDIA AND ANR ...... Petitioners
Versus
GURMAIL SINGH AND ORS .... Respondents

CR-7108-2018 (O&M)
FOOD CORPORATION OF INDIA AND ANR ...... Petitioners
Versus
JORA SINGH AND ORS .... Respondents

CR-7109-2018 (O&M)
FOOD CORPORATION OF INDIA AND ANR ...... Petitioners
Versus
GURDEV SINGH AND ORS .... Respondents

CR-7118-2018 (O&M)
FOOD CORPORATION OF INDIA AND ANR ...... Petitioners
Versus
RUP SINGH AND ORS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. K.K. Gupta, Advocate for the petitioners.
Mr. Hemraj Bhardwaj, Advocate for respondent No.1.

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HARKESH MANUJA, J. (ORAL)

By way of this order, the above-mentioned four revision petitions are being disposed of, wherein common question of law and fact is involved. For convenience, the facts are drawn from CR-7308-2018.

2. By way of present revision petition challenge has been laid to an order dated 19.07.2018 passed by Executing Court, whereby objections filed at the instance of petitioners/judgment-debtors have been dismissed.

3. Briefly stating, the land owned by respondent No.1, situated in the revenue estate of Village Dhaula, Teshil Malerkotla, District Sangrur was sought to be acquired vide notification dated 27.06.1978 issued under Section 6 of the Land Acquisition Act, 1894 by respondent No.2 for the benefit of petitioner/judgment-debtor. The Land Acquisition Collector passed its award dated 28.03.1979 in exercise of powers under Section 11 of Land Acquisition Act, 1894 (hereinafter referred to as 1894 Act). Being dissatisfied, respondent No.1-landowner filed Reference petition under Section 18 of 1894 Act which came to be decided on 04.08.1980 awarding compensation @ Rs.666/- per biswa.

4. Still aggrieved, the landowner/respondent No.1 approached this Court by way of RFA-483-1981 which was decided on 13.03.1990 awarding market value at the rate of Rs.745/- per biswa, besides all other statutory benefits as provided under the amended provisions of 1894 Act. Relevant extract from the judgment dated 13.03.1990 is reproduced hereunder:-

> "The decision of these appeals is covered by an Award given by me in RFA No.1621 of 1980 (Kesar Singh Vs. State of Punjab) decided on 01.03.1989. Land measuring 132 Bighas 1 Biswa situated in village Dohla District Sangrur was acquired by issuing a notification under Section 4 of the Land Acquisition Act on 27.06.1978. Some part of the land formed subject matter of decision in Kesar Singh's case (supra). A part of the land is involved in these appeals. While following the Award given by me in Kesar Singh's case (Supra), I determine the market value of the acquired land at Rs. 745/- per biswa. The appellants are held entitled to the grant of the statutory benefits of the amended provisions of Sections 23(2) and 28 of the Land Acquisition Act. The benefits as available under

> Section 21(1A) of the Act are declined in view of the ratio laid down in Union of India Vs. Mr. Filip Tiago De Gama J.T. 1989(4) S.C. 529."

A perusal of the aforementioned order shows that the assessment of market value was made @ Rs.745 per biswa besides grant of statutory benefits under the amended provisions of Sections 23(2) and 28 of 1894 Act, though denying the benefits under Section 23(1-A) of 1894 Act. Accordingly, respondent No.1-landowner was held entitled for award of solatium @30% of the market value.

5. Based on the aforesaid decision, the landowner/decree-holder filed an execution application on 05.06.1990, wherein objections were raised at the instance of petitioner/judgment-debtor, agitating the issue of award of solatium under the amended provisions of 1894 Act. The stand taken in the objections was that acquisition proceedings in the case in hand commenced vide notification dated 27.06.1978 and the award under Section 11 was made on 28.03.1979 followed by Reference Court award dated 04.08.1980 i.e. much prior to the coming into force of amended provisions of 1894 Act (w.e.f 30.04.1982) and thus the benefit of awarding solatium @30% could not have been granted in favour of respondent No.1-landowner. The aforesaid objections filed by the petitioner/judgment-debtor were dismissed by the Executing Court vide Order dated 11.05.1991 and the same is reproduced hereunder for reference:-

> "Present: Counsel for the D.H.
> Counsel for F.C.I./J.D.
> G.P. for the remaining J.D.

> This order shall dispose of the objections filed by F.C.I./J.Ds. The only objection taken by it is that the D.H. is not entitled to have solatium at the rate of 30%, but is entitled to receive the solatium only at the rate of 15%. The copy of the judgment of the Hon'ble High Court has been attached by the applicant with the present proceedings and in it I find that the Hon'ble High Court has granted solatium under the amended provisions of Section 23(2) of the Land Acquisition Act. Under the said provisions the solatium amount, to be given, is 30%. In the circumstances, the objections of the J.D. are without any meaning. The objection petition is dismissed. The J.D. is directed to make the payment of the amount claimed by the D.H. by 3.6.91. To come up on 3.6.91.
>
> Sd/- J.K. Goel,
> Addl. District Judge,
> Sangrur
> 11.5.91"

6. Aggrieved thereof, the petitioner/judgment-debtor approached this Court by way of CR-2215-1991 which again came to be dismissed vide order dated 09.07.1991. In the meanwhile, an application (CM-1476-CI-1991) under Section 152 of CPC was moved at the instance of petitioner/judgment-debtor before this Court in RFA-483-1983, seeking modification of judgment dated 13.03.1990, however, the said application was declined vide order dated 13.11.2007, which is reproduced hereunder:-

> "Having heard learned counsel for the parties and perusing the order passed by this Court as well as the judgments cited, I am of the view that the present application deserves dismissal. Hon'ble Supreme Court in Bijay Kumar Sarogi's case (supra), while considering an identical proposition of law whereby an application was filed by the land owners under Section 152 CPC for grants of benefit of the amended Act after the passing of the decree, held that the provisions could be invoked only for the limited purpose of correcting clerical errors or arithmetical mistakes in the judgment and section cannot be invoked for claiming a substantive relief, which was not granted under the decree.

> In the present case, the proposition is just reverse. While passing the order, this Court granted benefit of amended provisions of the Act. In the case the applicants were aggrieved against the order passed by the Court, the same could very well be appealed against but that course was not adopted and the present application was filed on June 3, 1991 for correction of order passed by this Court on March,13, 1990.
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> As far as the other order passed in C.M. No. 25-CI-1990 in RFA No. 1621 of 1980 Kesar Singh and others vs. State of Punjab as cited by learned counsel for the applicants is concerned, it would be suffice to add that though correction was made by this Court, however, perusal of the order shows that the same was made without any objection from the other side. In the present case, the application is strongly contested by the non-applicant raising legal objections. In that light, the order passed by this Court earlier cannot be relied up to grant the prayer made by applicant.
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> For the reasons mentioned above, the application is dismissed."

7. The aforesaid order dated 13.11.2007 was even assailed before the Hon'ble Apex Court, at the instance of petitioner/judgment-debtor, however, the same was declined vide order dated 25.08.2008 passed in SLP-(C)-244-2008.The aforesaid order is reproduced hereunder:-

> " ORDER
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> No ground is made out for interference under Article 136 of the Constitution of India. The Special Leave Petition is dismissed. However, question of law is left open."

8. Having lost their remedies of filing objections before Executing Court as well as seeking modification of decision dated 13.03.1990, another objection came to be filed at the instance of petitioner/judgment-debtor before the Executing Court opposing the grant of 30% solatium in favour of respondent No.1-landowner and

that too without disclosing the factum of dismissal of previous objection petition. The aforesaid objection petition came to be dismissed by the Executing Court vide order dated 19.07.2018, which has been impugned by way of present revision petition.

9. Learned counsel for the petitioner submits that once the award of 30% solatium in favour of respondent No.1-landowner was itself beyond the scope of law as laid down by the Hon'ble Apex Court as well as the amended provisions of 1894 Act, the Executing Court went wrong having dismissed the objections filed at the instance of petitioner/judgment-debtor. He further submits that the judgment dated 13.03.1990 passed in RFA-483-1981 was nullity to the extent of award of 30% solatium in favour of respondent No.1-landowner. In support, he also relies upon a decision made by Hon'ble Apex Court in case of "**State of Haryana Vs. Kartar Singh, 2013(11) SCC 375."** He further places reliance upon judgments passed in cases of **"Government of Andhra Pradesh Vs. B. Satyanarayana Rao, 2000(4) SCC 262"** and **"Deb Naryana Shyam Vs. State of West Bengal, 2005(2) SCC 286"** to contend that decision dated 13.03.1990 was per incuriam and thus could not be executed.

10. On the other hand learned counsel for respondent No.1-landowner submits that once having lost similar objections, the same plea afresh was not maintainable at the instance of petitioner/judgment-debtor and that too without even disclosing the factum of dismissal of

previous one. He further submits that having denied the remedy of Section 152 of CPC, objections filed by the petitioner were rightly declined.

11. I have heard learned counsel for the parties and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the petitioner.

12. A perusal of judgment dated 13.03.1990 passed by this Court in RFA-483-1981 filed at the instance of respondent No.1-landowner shows that the determination of market value was done @ Rs.745/- per biswa besides holding the landowner being entitled for statutory benefits of the amended provisions of Sections 23(2) and 28 of 1894 Act. Though an attempt was made at the instance of petitioner/judgment debtor to assail the aforementioned benefit by way of filing objections before the Executing Court as well as by having moved an application under Section 152 of CPC before this Court seeking modification of order dated 13.03.1990, however, both were declined. The order dated 11.05.1991 passed by the Executing Court declining the objections filed at the instance of petitioner/judgment-debtor on the same issue was even assailed before this Court by way of CR-2215-1991 besides even assailing the order dated 13.11.2007 passed by this Court on an application under Section 152 CPC filed at the instance of petitioner/judgment-debtor by way of an SLP. Both these challenges did not find favour and were declined and thus at this

belated stage no interference was warranted and the second set of objections on the same plea were rightly declined by the Executing Court.

13. As far as reliance placed by the petitioner/judgment-debtor upon the law laid down in case of "**Kartar Singh"(supra)**, is of no help, the same being clearly distinguishable. In the said case, the benefit under the provisions of amended act of 1894 Act were never granted either by the Reference Court in its original award or by the High Court in the First appeal but those were granted in favour of the landowners on an application filed before Reference Court invoking Section 152 of CPC, which came to be allowed, In the present case, however, the benefits under the amended provisions of 1894 Act were awarded in favour of respondent No.1-landowner right in the judgment passed by this Court on 13.03.1990 i.e. in the original proceedings and were never added by way of any application filed at the instance of landowners invoking Section 152 of CPC.

14. Still further, I am unable to find merits on the decisions relied upon by learned counsel for the petitioner/judgment-debtor in the cases of **"B. Satyanarayana Rao" (supra)** and **"Deb Naryana Shyam"** (Supra) in order to support the cause that a decision which is per incuriam is not executable in law. None of the said judgments lay down the proposition of law as preferred on behalf of petitioner/judgment-debtor. Moreover, any decision which is per incuriam may not be treated as a binding precedent for future intents

and purposes, yet, always continue to be binding between the parties to the lis and thus, enforceable in law at their instance. Reliance in this regard can be placed on judgment of Hon'ble Apex Court in **"S. Ramachandra Rao v. S. Nagabhushana Rao & Others"**, reported as 2022 AIR (Supreme Court) 5317. Relevant para of the same is reproduced hereunder:

> "10. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata."

16. At the cost of repetition, it is important to note here that similar objection assailing the award of benefit of 30% solatium under amended provisions of 1894 Act in favour of respondent No.1-landowner was agitated before the Executing Court on a previous occasion as well, though the same got rejected vide order dated 11.05.1991 and was even upheld by this Court vide order dated 09.07.1991 passed in CR-2215-1991. Present objections were again moved before the Executing Court without even disclosing the factum of dismissal of the first objection petition and thus, the whole proceedings

were initiated at the instance of petitioner/judgment-debtor who failed to approach the Court with clean hands having concealed the material facts and thus making itself liable for imposition of some reasonable cost for consuming the time of the Courts without sufficient cause left.

17. In view thereof, the present revision petitions are dismissed with cost of Rs.25,000/- each to be paid by petitioner to respondent No.1-landowner within a period of two months from today. Keeping in view the fact that acquisition proceedings in the present case commenced vide notification dated 27.06.1978, the Executing Court is requested to expedite the proceedings and conclude the same preferably within a period of three months.

03.10.2023 (**HARKESH MANUJA**)
tejwinder **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*