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

CR-457-2021
DATE OF DECISION:-13.10.2023

Haryana State Electricity Board, Shakti Bhawan
thr. its Chairman (HVPNL) ...Petitioner.

Vs.

Parduman Kumar Sandhir and others ...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Arvind Seth, Advocate and
Ms. Nikita Goel, Advocate,
for the petitioner.

Mr. Hemant Bassi, Advocate with
Mr. Ajit Lamba, Advocate,
for the respondents.

*****

HARKESH MANUJA, J.

1. By way of present revision petition, challenge has been laid to an order dated 20.02.2020 passed by the Executing Court-cum-Additional District Judge, Hisar, whereby, petitioner-judgment debtors have been directed to release a sum of Rs.73,73,183.77/- in favour of respondents-landowners against discharge of liability towards balance payment of compensation on account of acquisition of their land.

2. Briefly stating, vide notification dated 06.10.1994, issued under Section 4 of the Land Acquisition Act, 1894 (for short, “1894 Act”), followed by notification dated 06.10.1994, under Section 6 read with clause 17(1) of the 1894 Act, certain land owned by the private respondents which was situated within the revenue Estate of village Satrod Khas, Hadbast No.154, Tehsil and District Hisar, came to be acquired for the public

purpose, namely, installation of 132 K.V. Hisar-Fatehabad Link Line from 220 K.V. I/A Sub Station, Hisar. Though, the award under Section 11 of the 1894 Act was announced on 07.03.1996, however, the possession of the land in question stood taken over by the petitioner on 30.06.1994 i.e. even prior to the issuance of notification under Section 4 of the 1894 Act.

3. Being dissatisfied with the award passed under Section 11 of the 1894 Act, respondents filed references under Section 18 thereof, which came to be decided on 10.08.1999, whereby the market value was enhanced to Rs.100 per sq. yrd, besides grant of Rs.50/- per sq. yrd towards severance charges and other statutory benefits. The relevant portion thereof is reproduced hereunder:-

> *"37. In view of my findings on above issues, a sum of Rs.100/- per sq. yard is assessed as the market value for the land measuring 4 kanals 18 marlas comprised in Khewat No..192, Khatauni No.283 and a sum of Rs.50/- per square yard is further assessed as severance charges because the adjoining land measuring 21 kanals over which an electromagnetic corridor has been created. In this way the market value shall be calculated while adding the severance charges. It is further directed that:-*
>
> *i) In the light provisions contained in Section 23(1-A) of the Act, the petitioners shall be entitled to interest @ 12% per annum on the enhance amount of compensation.*
>
> *ii) The petitioner shall also be paid statutory solatium @30% over and above the enhance amount of compensation in the light of Section 23(2) of the Act.*
>
> *iii) In view of Section 28 of the Act, the petitioners shall also be entitled to interest @ 9% per annum for a period of one year from the date of taking over possession and @ 15% annum on expiry of the said period of one year till payment is made or deposited in the Court.*
>
> *iv) The petitioners shall also be entitled to costs of the*

petition. Counsel fee is assessed at Rs.300/- in each case."

4. Still aggrieved, the private respondents-landowners filed RFA No.2990 of 1999 (O&M), which was decided by this Court on 02.06.2016 and the market value was enhanced to Rs.436 per sq. yrd, upholding the severance charges and also the other benefits. The relevant portion thereof is reproduced hereunder:-

> *"Consequently, the land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.436/- per square yard, from the date of notification under Section 4 of the Act. They are also held entitled to receive 50% of the abovesaid market value as compensation for their unacquired land, on account of severance charges. Besides this, land owners shall be entitled to all the statutory benefits available to them, under the relevant provisions of the Act.*
>
> *However, lest there be any ambiguity in this regard, it is clarified that the land owners shall be entitled for 50% of the abovesaid market value as compensation on account of severance charges, for their unacquired land measuring 21 kanal and the findings recorded by the learned reference Court in this regard are upheld."*

5. The aforementioned decision dated 02.06.2016 passed by this Court was assailed before the Hon'ble Apex Court at the instance of State of Haryana by way of Civil Appeal Nos.16442-16443 of 2017, which came to be decided on 14.10.2017, whereby the market value was finally assessed @ Rs.300 per sq. yard, besides reducing the severance charges from 50% to 30% without disturbing the other statutory benefits awarded by the Reference Court and upheld by this Court. The relevant extract from the order dated 14.10.2017 is reproduced here under:-

> *"Accordingly, we reduce the compensation to Rs.300/- per square yard.*
>
> *We also reduce the compensation fee severance to 30%, instead of 50%. The grant of 50% was excessive."*

6. Based thereupon, the respondents-landowners filed execution application, wherein the petitioner raised an issue about calculation of compensation amount, which was rejected by the Executing Court vide order dated 20.02.2020, accepting the calculation provided by the respondent-landowners.

7. Impugning the aforesaid order dated 20.02.2020, learned Senior counsel for the petitioner submits that the calculations submitted by the private respondents are not in consonance with the exposition of law rendered by the Hon'ble Apex Court upon consideration of Sections 23(2) & 23(1-A) of the 1894 Act. It has been pointed out that in those calculations, the private respondents-landowners have added the benefit of Section 23(1-A) of the 1894 Act i.e. 12% from the date of dispossession till the passing of the award, which was impermissible as the possession of land in the case in hand was taken even prior to the notification issued under Section 4 of the 1894 Act.

Learned Senior Counsel further submits that the private respondents were not supposed to add benefit of Sections 23(2) and 23 (1-A) of the 1894 Act over the amount payable towards severance charges and in this regard, he placed reliance upon judgments of Hon'ble Supreme Court in case of ***"State of Punjab vs. Amarjit Singh and another", 2011 (4) SCC 734*** and ***"Revenue Divisional Officer Kurnool District vs. M. Ramakrishna Reddy (D) by Lrs." 2011 (4) SCC (Civil) 633.*** Para No.9 from the case of

Amarjit Singh's case (supra) besides, para No.8 from ***M. Ramakrishna Reddy*** (supra) are reproduced hereunder for reference:-

Para 9 of **Amarjit Singh's** case (supra):-

"In view of the above, the appeal is allowed, the orders of the High Court and the Executing Court, in so far as they hold that additional amount under Section 23(1A) is payable on solatium, are set aside. It is declared that additional amount under Section 23(1A) is awardable only on the market value determined under the first factor of Section 23(1) of the Act and cannot be calculated on the solatium payable under Section 23(2) of the Act."

Para 8 of **M. Ramakrishna Reddy's** case (supra):-

"The Reference Court has awarded additional amount under Section 23(1A) at 12% per annum from the date of preliminary notification (27.8.1993). Award of additional amount under Section 23(1A) of the Act would arise only where the possession is taken after the notification under Section 4(1) of the Act. Section 23(1A) permits additional amount to be awarded from the date of notification under Section 4(1) of the Act, to the date of award of Collector or the date of taking possession of the land, whichever is earlier. Where possession is taken prior to the date of notification under Section 4(1) of the Act, no additional amount is awardable under Section 23(1A) of the Act. Award of such amount cannot be sustained."

8. On the other hand, learned counsel representing the private respondents-landowners submits that the benefit of Section 23 (1-A) of the 1894 Act was specifically granted by the Reference Court in its award dated 10.08.1999, which even attained finality up to the Hon'ble Apex Court without having been disturbed. He further submits that on the previous occasion before the Executing Court as well, a similar objection was raised

at the instance of petitioner, which though was rejected vide order dated 20.10.2000, yet the said order was never assailed and thus, became final *inter se* the parties and accordingly, no fresh objections on the same issue could be entertained. Para 7 from the order dated 20.10.2000 is reproduced hereunder for reference:-

> *"7. In view of the law laid down in the authorities pressed into service by Mr. R.K. Vashisht, learned counsel for the Decree-holders, it is held that the petitioners are entitled for interest on the amount given on account of solatium, additional amount as well as on severance from the date of the award given by the Land Acquisition Collector. Manager, State Bank of Patiala, near Elite Cinema, Railway Road, Hisar is directed to release the amount of Rs.9,66,403-45 P in favour of the Decree-holders in equal shares. The remaining amount which has been attached by order of this Court on 22.07.2000, be released from attachment and the amount is allowed to be operated by H.S.E.B. (now H.D.B.V.N.L.)."*

As regards calculating the benefit under Section 23(2) and 23(1-A) of the 1894 Act, upon the amount of compensation payable towards severance charges, learned counsel for the private respondents submits that the same was specifically awarded in favour of landowners by the Reference Court and even upheld up to the Hon'ble Apex Court and thus, at the stage of execution, no such plea could be entertained at the instance of petitioner.

9. I have heard learned counsel for the parties and gone through the paper book as well as law cited at the bar. I am unable to find substance in the submissions made on behalf of the petitioner.

10. A perusal of the award dated 10.08.1999 passed by the Reference Court shows that the benefit under Section 23 (1-A) of the 1894 Act as well

as the determination of market value by adding the component of severance charges therein and thus, entitling the private respondents-landowners for award of benefits under Section 23 (2) and Section 23 (1-A) of the 1894 Act thereupon was specifically granted by the Reference Court and the same was never disturbed either by this Court or even by the Hon'ble Apex Court. The same being evident from the relevant portion of para 37 of the award dated 10.08.1999 is extracted herein below for reference:-

> "*In this way the market value shall be calculated while adding the severance charges.*"

It is apparent from the facts and circumstances of the present case that actually the relief of adding the component of severance charges towards the market value for the purposes of calculating the benefits under Sections 23(1-A) & 23(2) of 1894 Act was granted by the Reference Court, as the award was passed by it on 10.08.1999 i.e. much prior to the exposition of law made in case of ***Amarjit Singh (supra)*** vide decision dated 08.02.2011. The aforesaid relief granted by the Reference Court was somehow never disturbed in the subsequent proceedings qua the determination of compensation and thus, became final and as such the Executing Court was having no power to interfere with the same.

11. Similarly, the benefit of Section 23 (1-A) of the 1894 Act, which was specifically granted by the Reference Court on the amount of enhanced compensation once not having been disturbed in appeal, became final, *inter se* the parties and thus, the law laid down by the Hon'ble Supreme Court in ***M. Ramakrishna Reddy's*** case (supra) does not apply in the facts and circumstances of the present case. Relevant extract from para 37(i) of the

award passed by the Reference Court is reproduced hereunder for reference:-

> "37(*i*) *In the light provisions contained in Section 23(1-A) of the Act, the petitioners shall be entitled to interest @ 12% per annum on the enhance amount of compensation."*

At the present juncture, the Executing Court is precluded from reopening the issues as regard merits of the claim set up by the private respondents-landowners and has to execute the award and the judgments passed by this Court as well as the Hon'ble Apex Court, as it is.

12. No doubt, in a case where any decree or order which has been passed by a Tribunal/Court is wholly without jurisdiction, it can be assailed in collateral proceedings including the execution. Nonetheless, in the present facts, the said proposition of law cannot be made applicable as the Land Acquisition Tribunal, while entertaining the reference filed at the instance of private respondents/landowners had the subject matter as well as the territorial jurisdiction to entertain the same and thus, there was no question of any jurisdictional error or lack of inherent jurisdiction while passing the Award dated 10.08.1999 and the benefit awarded under Section 23(1-A) of the 1984 Act, besides, the relief of calculating market value upon addition of component of severance charges were not even disturbed either by this Court or by the Hon'ble Apex Court. Moreover, certain relief granted under a decree, though legally unsustainable, Executing Court has to execute the same as it is and cannot go beyond it by sitting over it as an appellate forum. The aforesaid view is even derived from the decision made by Supreme Court in "**Haryana Vidyut Parsaran Nigam Limited Vs. Gulshan Lal" 2009(4) RCR 880**, and relevant paragraphs 19 to 22 thereof are reproduced hereunder:-

"19. Mr. Jain has relied upon a decision of this Court in ***Bhawarlal Bhandari vs. Universal Heavy Mechanical Lifting Enterprises*** *[(1999) 1 SCC 558]. Therein the decree was passed by a court lacking inherent jurisdiction and in that situation this court considered as to whether a decree passed by a court wholly without jurisdiction would be a nullity to hold:*

"10. The aforesaid decision of this Court squarely applies to the facts of the present case. This is not a case in which the award decree on the face of it was shown to be without jurisdiction. Even if the decree was passed beyond the period of limitation, it would be an error of law or at the highest a wrong decision which can be corrected in appellate proceedings and not by the executing court which was bound by such decree. It is not the case of the respondent that the Court which passed the decree was lacking inherent jurisdiction to pass such a decree. This becomes all the more so when the respondent did not think it fit to file objection against the award which was sought to be made rule of the court."

It is on that premise the question which has been raised by Mr.Jain that the court could not have passed a decree for back wages for a period of more than three years assumes importance. Whether by reason of the decree the respondents would be getting some amount by way of back wages for a period of more than three years would depend upon the facts of each case. It would also depend upon the date on which the cause of action of suit arose.

20. As indicated hereinbefore, for the purpose of allowing an objection filed on behalf of a judgment debtor under Section 47 of the Code of Civil Procedure, it was incumbent on him to show that the decree was ex facie nullity. For the said purpose, the court is precluded from making an in depth scrutiny as regards the entitlement of the plaintiff with reference to not only his claim made in the plaint but also the defence set up by the judgment - debtor. As the judgment of the Trial Court could not have been *reopened, the correctness thereof could not have been put to question.*

It is also well-known that an Executing Court cannot go behind the decree. If on a fair interpretation of the judgment, Order and decree passed by a court having appropriate jurisdiction in that behalf, the reliefs sought for by the plaintiff appear to have been granted, there is no reason as to why the Executing Court shall deprive him from obtaining the fruits of the decree.

In ***Deepa Bhargava v. Mahesh Bhargava [2008 (16) SCALE 305]****, this Court held as under:*

"11...An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. A default clause contained in a compromise decree even otherwise would not be considered to be penal in nature so as to attract the provisions of Section 74 of the Indian Contract Act."

21. It is also not a case where this Court can exercise its jurisdiction under Article 142 of the Constitution of India to mould an order. The decree passed by the learned Trial Court has attained finality. Whether rightly or wrongly, the judgment of the learned Trial Judge has been affirmed by this Court. It is one thing to say that no right having crystalised in favour of a party to the lis, this Court can mold the relief appropriately, but it is another thing to say that despite the decree being found to be an executable one, this Court will refuse to direct execution thereof.

22. We are not oblivious of the fact that the respondents legally would not have been entitled to the reliefs prayed for by them. However, as a decree has been passed, we do not intend to go behind the same. The Executing Court shall, it goes without saying, execute the decree strictly in terms thereof."

13. Moreover, at an earlier stage in the execution proceedings, these very objections were raised at the instance of petitioner, the same were

though rejected specifically vide order dated 20.10.2000, which however, was never assailed at the instance of petitioner and thus, raising of similar objection at a subsequent stage in the execution was wholly impermissible in law. The aforesaid view is derived from the observations made by Hon'ble Supreme Court in case of ***"S. Ramachandra Rao vs. Nagabhushana Rao and others,*** *reported as 2022 Livelaw (SC) 861.* Para 10 thereof being relevant is reproduced hereunder:-

> *"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."*

14. In view of the discussion made hereinabove, finding no merit in the present revision, the same is, hereby dismissed, upholding the order dated 20.02.2020, passed by the Executing Court.

15. Considering the fact that the acquisition proceedings in the present case commenced in the year 1994 and the private respondents-landowners are still waiting for the release of their entire dues towards the compensation awarded against the acquired land, the Executing Court is requested to

conclude the proceedings within a period of three months from today.

16. Pending applications, if any, stand disposed of.

13.10.2023 **(HARKESH MANUJA)**

sonika **JUDGE**

whether speaking/reasoned: Yes/No
whether reportable: Yes/No