

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

(127)**CR No.1021-2023****Date of Decision: 04.07.2023**

The Improvement Trust, Ludhiana

.....Petitioner

Versus

Iqbal Singh (now deceased) through LR's and others.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. D. V. Sharma, Senior Advocate, with
Ms. Kavita Arora, Advocate, for the petitioner.

Mr. S. S. Salar, Advocate, for the respondents.

HARKESH MANUJA, J.(ORAL)

1. By way of present revision petition, challenge has been made to an order dated 05.11.2022 passed by the Executing Court-cum-Civil Judge (Sr.Divn.), Ludhiana, whereby objections filed at the instance of petitioner/judgment debtor stand declined.

2. In the present case, land owned by the private respondents was acquired by way of notifications dated 08.07.1975 and 10.01.1977 issued under Sections 36 and 42 of the Punjab Town Improvement Act, 1922, followed by an Award dated 24.07.1978.

3. Aggrieved against the compensation assessed by the Collector, reference was filed under Section 18 of the Land Acquisition Act, 1894 and the Land Acquisition Tribunal vide Award dated 04.06.1986, in addition to the enhanced compensation also awarded an amount equal to 12% per annum over and above the market value from the date of publication of notice under Section 36 of the Punjab Town Improvement Act, 1922, till the date of delivery of possession or the pronouncement of Award by the Collector besides grant of other statutory benefits.

4. Dissatisfied with the enhancement awarded in their favour, the land owners impugned the aforesaid Award dated 04.06.1986 before this Court by way of **CWP No.5721 of 1986 titled as Iqbal Singh and anr. Vs. Land Acquisition Tribunal, Ludhiana Improvement Trust, through its president and others**, which came to be decided vide judgment dated 16.08.2010, wherein the market value was further enhanced besides upholding award of 12% per annum over above the compensation from the date of publication of notice under Section 36 of the Punjab Town Improvement Act, 1922, till the date of delivery of possession or the pronouncement of the Award by the Collector including grant of other statutory benefits.

5. Based on the aforesaid enhancement, the private respondents i.e. land owners filed execution applications wherein, the petitioner moved objections, opposing the aforesaid Award of 12% and the calculations based thereupon. The executing Court vide its order dated 05.11.2017, declined the objections filed at the instance of petitioner and the said order has been impugned by way of present revision petition.

6. Learned Senior Counsel for the petitioner vehemently submits that the benefit of 12% as awarded and upheld in favour of the land owners was having statutory basis and thus, the same could not be executed against petitioner-Judgment Debtor. In this regard, learned Senior Counsel for the petitioner places reliance upon a decision made in **K.S. Pariapoornan And Ors. vs State Of Kerala And Ors., 1995, AIR (SC) 1012**. Learned Senior Counsel further submits that the Award dated 04.06.1986 passed by the Land Acquisition Tribunal awarding the benefit of 12% which was upheld by this Court vide order dated 16.08.2010 passed in CWP No.5721 of 1986 was in fact an act of fraud on the part of land owners as the amended provisions of Section 23(1)(A) of the Land Acquisition Act, 1984 were never brought to the

notice of either the Land Acquisition Tribunal or this Court. Referring to a decision rendered by Hon'ble Supreme Court in case of **S.P.Changalvarava Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. 1994 (1) SCC 1**, learned counsel submits that any decision which has been obtained as a result of fraud, the Executing Court can deny its execution and the same can even be challenged in any collateral proceedings including to execute the proceedings as well. Learned Senior Counsel also submits that the benefit of additional 12% as awarded in favour of other land-owners pertaining to the same acquisition proceedings/Award by the Land Acquisition Tribunal was upset by this Court vide judgment dated 15.01.2009 passed in CWP No.2293 of 1990.

7. On the other hand, learned counsel representing the private respondents submits that the benefit of additional 12% was awarded by the Land Acquisition Tribunal, Ludhiana, vide its Award dated 04.06.1986, in the presence of petitioner having been represented through its counsel, however, no challenge to the same was ever made by it and thus, the Award qua the same became final inter-se the parties. He also submits that no legal infirmity can be found in the order passed by the Executing Court which in any case cannot travel beyond the decree passed inter se the parties, unless the same was found to be wholly without jurisdiction.

8. I have heard learned counsel for the parties and gone through the paper book. I am unable to find any substance in the submissions made on behalf of the petitioner.

9. In the present case, on account of acquisition of land owned by the private respondents, they having filed reference, were granted the benefit of enhancement besides additional benefit of 12% per annum over and above the compensation from the date of publication of notice under Section 36 of the Punjab Town Improvement Act, 1975, till the date of taking over

possession vide award dated 04.06.1986. The aforesaid Award passed by the Land Acquisition Tribunal, was challenged by the land-owners before this Court wherein the additional benefit of 12% was upheld and the same was never challenged by the petitioner before this Court, except in the execution proceedings. Reliance placed upon by learned Senior Counsel appearing on behalf of the petitioner to the judgment passed in case of **K.S. Pariapoornan and Ors. (Supra)**, would not come to the rescue of the petitioner at this stage, as the benefit which was awarded in favour of the private respondents-Land owners by the Land Acquisition Tribunal was even upheld by this Court vide order dated 16.08.2010 in a writ petition filed by the predecessor-in-interest of the respondents, which was never challenged by the petitioner.

10. As regards plea of fraud, the Court is not convinced as no particulars of fraud have either been pleaded or established. Moreover, it was the duty of the petitioner to have remained vigilant and alive of its rights available in law about impugning the Award dated 04.06.1986 passed by the Land Acquisition Tribunal, Ludhiana, or the decision dated 16.08.2010 passed in CWP No.5721 of 1986. It is not the case pleaded/ set up or established by the petitioner that the benefit of additional interest was obtained by the private respondents i.e. the land owners having mis-represented the Land Acquisition Tribunal or this Court. Even the judgment dated 15.01.2009 passed by this Court in CWP No.2293 of 1989 wherein, the other similarly situated land owners relating to the same acquisition proceedings were declined the similar benefit of additional compensation of 12%, cannot come to the rescue of the petitioner as the same is operative inter se the parties only and cannot be relied upon to re-open the rights finally settled in the present case.

11. No doubt, in a case where any decree or order which has been passed by a Tribunal/Court is wholly without jurisdiction, 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/land owners 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 04.06.1986 which was even upheld by this Court and was never challenged by the petitioner by way of filing any appeal etc. Moreover, certain relief granted under a decree, though legally unsustainable, Executing Court has to execute the same as it is & can't go beyond it by sitting over it as an appellate forum. The aforesaid view is even derived from decision made by Supreme Court in case of **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 mould 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.”

12. In view of the aforesaid discussion, the present revision petition is dismissed being devoid of merits. The matter is referred back to the Executing Court for its adjudication with regard to the calculation and disbursement of compensation with liberty to the parties to submit their fresh calculations and to lead evidence in support thereof.

13. Considering the fact that the acquisition in the present case relates back to the year 1975, the aforesaid exercise shall be concluded preferably within a period of one year from today.

(HARKESH MANUJA)
JUDGE

04.07.2023
anil

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