IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Revision No.155 of 2023
Decided on 22nd April, 2024

National Thermal Power Corporation Limited
…Petitioner

Versus

Haria alias Hari Ram
…Respondent

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

[1]Whether approved for reporting? Yes

For the petitioner: **Mr. Neeraj Gupta, Senior Advocate, with M/s Ajit Jaswal, Rinki Kashmiri, Pranjal Munjal and Vedant Ranta, Advocates.**

For the respondents: ***Ex-parte*.**

Ajay Mohan Goel, Judge *(Oral)*

By way of this revision petition, the petitioner has challenged order dated 18.08.2023, passed by the Court of learned Additional District Judge, Mandi, H.P., in execution petition No.4 of 2021, in terms whereof, the objections to the execution petition filed by the present petitioner stand dismissed and a direction has been issued to the petitioner herein to deposit the enhanced amount of compensation in favour of the execution petitioner.

2. Brief facts necessary for the adjudication of the present petition are that land of the petitioner alongwith other land owners was acquired for the purpose of construction of the Kol Dam. The award was passed by the Land Acquisition Collector on 19.07.2002. Though, Reference Petitions were preferred against the award by the other land owners, the respondent herein did not file any Reference Petition under Section 18 of the Land Acquisition Act. The Reference Petition preferred by the other land owner(s) i.e. Reference Petition No.206 of 2006, was allowed by the Court of learned District Judge, Mandi, H.P., on 15.07.2011, by enhancing the compensation granted by the Land Acquisition Collector. Thereafter, the respondent herein filed an Execution Petition under Order 21 Rule 30 of the Code of Civil Procedure seeking an execution of the award passed in Reference Petition No.206 of 2006. Objections were filed by the present petitioner, *inter alia*, on the ground that the Execution Petition was not maintainable as the execution petitioner had no locus to file and maintain the execution petition, as he was not a party in the Reference Petition and he had already independently filed proceedings

under Section 28(A) of the Land Acquisition i.e. he had availed his statutory remedy to this effect, which, at the relevant time were pending adjudication.

3. In terms of the impugned order, the objections filed by the revision petitioner has been dismissed and learned Court below by holding that as the compensation awarded in the award passed by the land Acquisition Collector stood enhanced in Reference Petition No.206 of 2006, decided on 15.07.2011, which fact was not in dispute, therefore, as the land of the execution petitioner was falling in the khata number, which stood acquired, therefore, the objections were liable to be dismissed. The Executing Court further directed the present petitioner to deposit the enhanced amount of compensation.

4. Learned Senior Counsel for the petitioner has argued that the impugned order passed by the learned Executing Court is per se perverse. He has argued that learned Executing Court erred in not appreciating that the execution proceedings were not maintainable for the reason that as respondent herein was not a party/reference petitioner in Reference Petition No.206 of 2006, by no stretch of imagination on the basis of an award passed by

the learned District Judge in the said Reference Petition, the respondent herein could have filed an Execution Petition. As per learned Senior Counsel, it was only the reference petitioners in the said Reference Petitions, who had locus to execute the award and as the respondent was a stranger as far as the Reference Petition is concerned, therefore, he had neither any locus to file and maintain the Execution Petition nor the Executing Court could have had dismissed the objections filed by the present petitioner and granted relief to the respondents as it stands granted in terms of the impugned order. Learned Senior Counsel while referring to the material on record has also argued that otherwise also as respondent herein had received compensation as was mutually agreed between the parties, this important aspect of the matter was also ignored by the learned Executing Court while passing the impugned order. Accordingly, he prayed that the present petition be allowed and the impugned order be quashed and set aside.

5. I have heard learned Senior Counsel for the petitioner and I have also carefully gone through the impugned order as well as the documents on record.

6. The documents appended with the petition demonstrate that respondent was not the petitioner in Reference Petition No.206 of 2006. Yet, Execution Petition was filed by the respondent for the execution of the award passed in Reference petition No.206 of 2006, decided on 15.07.2011. This Court fails to understand as to how a person, who was not a party in the Reference Petition, could have sought execution thereof. This extremely important aspect of the matter has been ignored by the learned Court below while passing the impugned order. Learned Court erred in not appreciating that the award that was passed in Reference petition No.206 of 2006 was to be treated as an award intra the parties which were before the Court and accordingly, execution thereof could only have been at the behest of the parties and not a 3rd party or a stranger. This Court is not oblivious of the fact that the land of the petitioner was also acquired for the same purpose which was relatable to Reference Petition No.206 of 2006, but the statutory scheme does not envisages that a person who has not filed a Reference Petition can seek enhancement of the compensation by filing an

Execution Petition on the strength of the award passed by the learned District Judge, Mandi, H.P., in a Reference Petition preferred by another land owner similarly situated as the petitioner. In fact Section 28(A) of the Land Acquisition Act which was inserted by the amendment which was incorporated in the year 1984 was inserted to safeguard the interest of a land owner like the respondent herein which also is reflective of the fact that even the legislature did not deem it appropriate that enhancement of compensation could have been claimed by a land owner on the strength of award passed in a Reference Petition of a land owner may be similarly situated. Learned Executing Court erred in not appreciating that enhancement, if any, if permissible in law, could have been sought by the respondent only under Section 28(A) of the Act and not in terms of the mode which was adopting by him i.e. filing an Execution Petition on the strength of an award passed in a Reference Petition of other land owners.

7. Hon'ble Supreme Court in *Sanwarlal Agrawal and others* versus *Ashok Kumar Kothari and others (2023) 7 SCC 307,* has iterated that it is a well-settled principle that a Court

executing a decree cannot go behind the decree: it must take the decree as it stands, for the decree is binding and conclusive **between the parties to the suit**. Earlier in *Rameshwar Dass Gupta* versus *State of Uttar Pradesh and others (1997) SCC 410*, Hon'ble Supreme Court held that it was well settled legal position that an executing Court cannot travel beyond the order or decree under execution and it gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 of the Code of Civil Procedure Code. Similarly, in *Vedic Girls Senior Secondary School Arya Samaj Mandir Jhajjar* versus *Rajwanti and others (2007) 5 SCC 1997*, Hon'ble Supreme Court held that the Executing Court was required to act within the bounds of the decree and not travel beyond it or to widen its scope without invocation of the provisions of Section 47 of the Code of Civil Procedure.

8. At this stage, this Court would like to refer to the judgment of the High Court of Punjab and Haryana, in *State of Haryana* versus *Jai Dev 2010 SCC Online P&H 7456*. In the said case, the respondent did not seek any Reference under Section 18 of the Land Acquisition Act, but filed an application in

execution petition to claim compensation at the same rate as was awarded to other land owners on the ground that he was a co-sharer. The High Court of Punjab and Haryana held that since the respondent was not a party in Reference before the learned District Judge under Section 18 of the Act and since he was not a party in the execution proceedings, he could not claim compensation on the basis of compensation awarded to other co-owners, who had sought Reference under Section 18 of the Act. The Court further held that the claim of the Reference petitioner was personal, restricted to the extant land owned by them alone and, therefore, in the absence of the respondent being a party to the Reference, the Executing Court could not travel beyond the order rendered by the Reference Court to return the findings that the respondent was entitled to the same compensation as was awarded to other co-owners who are party in the Reference Petition.

9. Accordingly, in view of the above discussion and the case law referred hereinabove, this petition is allowed. Order dated 18.08.2023, passed by the learned Additional District Judge-I, Mandi, H.P., is set aside by holding that the Executing

Petition preferred by the respondent was not maintainable. Pending miscellaneous applications, if any, also stands disposed of.

(Ajay Mohan Goel)
Judge

April 22, 2024
(Vinod)