

Ashwani Kumar Dhingra

Vs

State of Punjab

Civil Appeal No. 2977 of 1979

(N. M. Kasliwal, Yogeshwar Dayal JJ)

06.03.1992

JUDGEMENT

YOGESHWAR DAYAL, J.:-

1. This is an appeal by Shri Ashwani Kumar Dhingra, Advocate, Fazilka, against the judgment of the Punjab and Haryana High Court dated 11th September, 1978 dismissing the Writ Petition (C.W.P. 3771 of 1978), filed by him. Before considering the submissions on behalf of the appellant, it would be necessary to know a few facts.

2. It appears that Sh. Sudhir Kumar Dhingra and his father, Shri Nand Lal Dhingra, advocate had earlier filed a Writ Petition (C.W. No. 3465 of 1973) against the State of Punjab for quashing Notifications dated 6th August, 1973 issued under Ss, 4 and 6 of the Land Acquisition Act, 1894. In this writ petition, the appellant herein was not a party. However, the learned single Judge of the High Court by judgment dated 19th November, 1976 accepted the writ petition and quashed the impugned Notifications issued under Ss. 4 and 6 of the Land Acquisition Act dated 6th August, 1973. The learned single Judge in the said writ petition also directed that the petitioners in that writ petition would be entitled to take possession of the property on depositing compensation. The State of Punjab being dissatisfied filed Letters Patent Appeal against the aforesaid judgment of the learned single Judge dated 19th November, 1976. The Letters Patent Appeal (No. 14 of 1977) came up for hearing before a Division Bench of the High Court on 9th August, 1978 : (reported in 1978 Pun LJ 319). After hearing the Letters Patent Appeal, the Division Bench dismissed the appeal but modified the order of the single Judge to the extent that they quashed the impugned Notifications dated 6th August, 1973 "in so far as they relate to the land of the respondents therein". The respondents therein were only Shri Sudhir Kumar -Dhingra and his father, Shri Nand Lal Dhingra, advocate.

3. The result of the said decision was that the Division Bench restricted to quashing of the impugned Notification only in relation to the land of the respondents in the Letters Patent Appeal. It appears that after the dismissal of the aforesaid Letters Patent Appeal the appellant herein, Shri Ashwani Kumar Dhingra filed a writ petition on or about 5th September, 1978 for quashing the same Notifications dated 6th August, 1973 issued under Ss. 4 and 6 of the Land Acquisition Act.

4. It also appears that in pursuance of the impugned Notification under Ss. 4 and 6 of the Land Acquisition Act, the Collector had announced his award on 11th December, 1973 and the compensation awarded by the Collector was accepted by the petitioner, Shri Ashwani Kumar Dhingra under protest and thereafter he filed applications. for enhancement of compensation before the competent Court. The writ petition filed by the present appellant came up for hearing before the

same bench which had decided the earlier Letters Patent Appeal No. 14 of 1977 and the Division Bench passed the following order:

"The only contention raised before us is @page-SC976 that in L.P.A. No. 14 of 1977 decided on August 9, 1978, the whole notification deserved to be quashed and that part of the notification concerning the respondents in that case could not legally be quashed. In the circumstances of the case, we are not agreeable with the learned counsel, especially when relief was granted to the respondents in that letters patent appeal on the basis of the concession that was made by Mr. Anand Swarup, Senior Advocate, who was appearing for the respondents. Moreover, no writ petition is legally maintainable on the ground that a wrong concession was made in the letters patent appeal which was decided by it earlier, or that the decision in that appeal was wrong.

No other point is urged before us.

For the reasons recorded above, this petition fails and is dismissed in limine."

5. It is apparent from the aforesaid order of the Division Bench that the contention urged in support of the writ petition on behalf of the appellant was that the Letters Patent Appeal No. 14 of 1977 was wrongly decided. Against the aforesaid decision dated 11th September, 1978 Special Leave Petition was filed which is the subject-matter of the present appeal.

6. Mr. G. L. Sanghi, learned counsel for appellant relied on the decision of this Court in *A. Viswanatha Pillal v. Special Tahsildar for Land Acquisition No. IV (AIR 1991 SC 1966)* and submitted that the Writ Petition No. 3465 of 1973 which was filed by none other than his brother and father, it must have been deemed that the said writ petition had been filed by his father and brother on behalf of the appellant also. It appears to us that the reliance by the appellant herein on the said decision is not really appropriate. It was observed in the aforesaid decision of the Supreme Court at page 1969:

"When one of the co-owners or coparceners made a statement in his reference application that himself and his brothers are dissatisfied with the award made by the Collector and that they are entitled to higher compensation, it would be clear that he was making a request, though not expressly stated so but by necessary implication that he was acting on his behalf and on behalf of his other co-owners or coparceners and was seeking a reference on behalf of other co-owners as well. What was acquired was their totality of right, title and interest in the acquired property and when the reference was made in respect thereof under S. 18 they are equally entitled to receive compensation pro rata as per their shares."

7. It is clear from the aforesaid observation that the Supreme Court found on facts that one brother who was the co-owner and coparcener was acting on his own behalf as well as on behalf of other brothers while seeking a reference for enhancement of compensation. The question there was whether the reference application filed by one brother was on his own behalf or on behalf of other coparceners as well. Mr. Sanghi relying on the aforesaid judgment submitted before us that the decision of the Division Bench dated 9th August, 1978 in the Letters Patent Appeal, when it quashed the Notifications under Ss. 4. and 6 of the Land Acquisition Act "in so far as it related to the respondents therein", included the appellant herein as well.

8. We are afraid that the decision of the Supreme Court relied upon has no application to the facts of the present case. In the Writ Petition No. 3465 of 1973 or Letters Patent Appeal No. 14 of 1973 neither the appellant's father nor his brother made any representation that they were filing writ petition on behalf of the appellant herein either express or by necessary implication. The earlier litigation referred to by us was filed by Shri Sudhir Kumar Dhingra and Shri Nand Lal Dhingra (brother and father of the appellant respectively) in their own right only and not on behalf of the appellant herein. Father and brother had not pleaded any coparcenary with the appellant herein. Before us also no coparcenary is being pleaded by the appellant with his father and brother. Only co-ownership or coparcenary was claimed with his brother Shri Sudhir Kumar Dhingra. There could be no coparcenary in the presence of the father between the brothers only by @page-SC977 excluding the father. One co-owner may challenge the acquisition whereas the other co-owner may be satisfied with the acquisition and ask for compensation and even for enhancement of compensation; other brother may challenge the acquisition proceedings in his own right; merely because one brother accepts compensation, other brother is not estopped from challenging acquisition. Similarly, where one co-owner challenges acquisition, his rights will not be affected merely because other co-owner had accepted acquisition and the compensation.

9. In the counter-affidavit filed in this Court, it is pointed out that the writ petition out of which the present appeal arises was filed approximately five years after the date of Notification under Ss. 4 and 6 of the Land Acquisition Act and after the award and the appellant had not challenged the acquisition of land all these years and had, in fact, accepted the compensation under protest. Mr. Sanghi then submitted that in the writ petition filed by the father and brother also they were allowed by order dated 18th December, 1974 to withdraw the compensation payable to them without prejudice to their rights in the writ petition. It will be noticed that the order dated 18th December, 1974 was passed during the pendency of the Writ Petition No. 3465 of 1973 and the petitioners in that writ petition withdrew the amount of compensation after express permission of the High Court so that their rights in the writ petition are not prejudiced in any way.

10. The acceptance of compensation under protest was not done by the appellant with a view to safeguard his right to challenge the acquisition itself but to safeguard his right to require the matter being referred by the Collector for determination of the Court in relation to the matters mentioned in S. 18 of the Land Acquisition Act. It is clear from the provisions of S. 18 of the Land Acquisition Act that the person interested, in order to enable him to seek the remedy of reference can do so only if he does not accept the award. In order to show that the person concerned had not accepted the award the claimants accept the compensation only under protest because once the compensation awarded in pursuance of the award is accepted without protest the person concerned may lose his right to a reference for various matters mentioned in S. 18 of the Land Acquisition Act.

11. It is clear in the present case that the appellant had not challenged the acquisition and it was not shown to us that he withdrew the compensation in pursuance of any order of any Court to safeguard any other rights. It is also clear from the order of the learned Division Bench dismissing the writ petition, filed by the present appellant, of what contention was urged by him before them. Learned counsel for the appellant submitted that this was not the contention urged by him before the High Court. We are afraid, such a plea cannot be permitted in the present appeal when the order was pronounced in the open Court and the order was naturally to be pronounced on the submissions made before the learned Division Bench. If the appellant had any such grievance, he should have approached the Division Bench with such a plea.

12. Thus, there is no merit in the appeal and it is dismissed. Parties are, however, left to bear their

own costs of the present proceedings. Appeal dismissed.

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