

PETITIONER:
RAMESH SINGH (DIED) BY LRS. & ORS.

Vs.

RESPONDENT:
STATE OF HARYANA & ORS.

DATE OF JUDGMENT: 16/01/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIAK (J)

CITATION:
1996 SCC (4) 469 JT 1996 (5) 467
1996 SCALE (2)839

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Notification under Section 4 of Land Acquisition Act [1 of 1894] [for short, 'the Act'] was published on August 2, 1973 acquiring the lands situated in Etmadpur Village for public purpose. The Collector awarded compensation under Section 11 by his award dated February 19, 1974. Dissatisfied therewith, Ramesh Singh and Hari Singh filed application under Section 18 which was duly referred by the Collector to the Civil Court. The Addl. District Judge, Gurgaon dismissed the reference petition on May 3, 1978. Rimal Singh, one of the claimants equally sought a separate reference in respect of his claim. Thereon, the Addl. District Judge, Gurgaon enhanced the compensation. The Legal Representatives of Ramesh Singh, the petitioners and Hari Singh filed an application to implead themselves in the reference of Rimal Singh which was also dismissed by the District Judge on May 1, 1986. The petitioners allege that they challenged the order in a revision said to have been filed on November 3, 1986 and is stated to be pending decision in the High Court. However, we are not concerned with the same.

When Rimal Singh filed execution application to enforce his award made under Section 26, the petitioners filed an application in the execution Court to award the same compensation on par with Rimal Singh and the Addl. District Judge, Gurgaon, by his order dated April 8, 1992 allowed the application and enhanced the compensation as awarded to Rimal Singh. The State filed the Revision No.2248 of 1992 and by the impugned order dated September 2, 1993, the learned single Judge allowed the revision and set aside the order of the District Judge. Thus this special leave petition.

Shri Rohtagi, learned counsel for the petitioners contended that the petitioners have a joint interest in the lands acquired admeasuring 20 kanals 4 marlas and,

therefore, being co-owners, they are entitled to the same compensation as was awarded to Rumal Singh. The execution Court, therefore, has rightly granted the enhanced compensation to the petitioners. The High Court was not right in its revisional jurisdiction under Section 115, C.P.C. to interfere with and set aside the order. There is manifest error of jurisdiction committed by the High Court. We find no force in the contention. In view of the narration of the facts, it is clear that Ramesh Singh and Hari Singh dissatisfied with the award made by the Collector under Section 11 had sought reference under Section 18 which was duly made to the Civil Court. The District Judge dismissed the reference Rumal Singh equally sought reference and he had the compensation enhanced in the award and decree dated May 1, 1986 under Section 26. The only remedy to the petitioners and Hari Singh is to have corrected the illegality in the order of reference under Section 18. It does not appear to have been availed of. The remedy under Section 28A is not available to the petitioners since they have availed of the remedy under Section 18.

The question then is: whether the execution Court which passed the award in the case of Rumal Singh had jurisdiction to implead the non-parties to the award and make the award in their favour. It is settled law that the execution Court cannot go behind the award and decree. It has jurisdiction only to execute the decree made under Section 26 and in case of an appeal, under Section 54 and further appeal under Art.136 of the Constitution to this Court as may be modified in the appellate decree which ultimately would be the executable decree. Besides the decree, the execution Court is devoid of jurisdiction and power to go behind the decree either to implead third parties to it who are not persons claiming right, title and interest in the decree through the decree-holder nor does it have power to pass an independent award and decree under Section 26 in favour of the third parties. The civil Court gets jurisdiction to award compensation higher than the compensation made under Section 11 in respect of the acquired land only on reference under Section 18. It is not an ordinary Civil court under Section 9 of the Civil Procedure Code but a Court constituted for the purpose of deciding the compensation for the acquired land under the Act on reference to an established Court. Under the Act even a Special Judge could award compensation on reference under Section 18. The execution Court cannot even amend the decree of inter-parties. The only remedy for the inter-parties would be to have the decree, as engrafted under Section 265 or modified or affirmed in appeal either under Section 54 or under Article 136 of the Constitution, as the case may be. The execution Court, therefore is devoid of jurisdiction and power to amend the decree or to award compensation and statutory benefits to the petitioners. The order is a nullity. The High Court, therefore, has rightly corrected obvious and palpable error of jurisdiction committed by the Addl. District Judge Gurgaon, i.e., execution Court in awarding compensation and statutory benefit Section.

It is argued by Shri Rohtagi that the petitioners being co-owners, they are entitled to compensation on parity with other co-owners and the denial thereof is violative of Art.14. We find no force in the contention. Having laid independent claims and sought reference under Section 18, the right and remedy are only as provided under Section 18 or on an appeal under Section 54 but not by way of getting impleaded on the premise of a co-owner. Merely because one of the claimants had got higher compensation, others do

not automatically get the same compensation unless the remedies, as provided under the Act, are availed of. One of the remedies under the Act is Section 28A; if it is available according to law. Determination of higher compensation in favour of some claimants or so-called co-owners and denial thereof to other claimants is not violative of Article 14 of the Constitution. The subject matter having been regulated under the provisions of the Act, the right and remedy for higher compensation should be sought and had only under the Act. The principle of equality of Art.14 cannot be extended in that behalf.

The S.L.P. is accordingly dismissed.

JUDIS