

PETITIONER:
ASHWANI KUMAR DHINGRA

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 06/03/1992

BENCH:
YOGESHWAR DAYAL (J)
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YOGESHWAR DAYAL (J)
KASLIWAL, N.M. (J)

CITATION:
1992 AIR 974 1992 SCR (2) 39
1992 SCC (2) 592 JT 1992 (2) 353
1992 SCALE (1) 555

ACT:

Land Acquisition Act, 1894:

Ss. 4, 6, 12, 18-Land acquisition-Co-owners-Writ petition by father and brother-No co-ownership pleaded-High Court quashed notification concerning the two litigants only-Other brother accepted compensation under protest and sought reference for enhancement of compensation-Writ petition by him after about 5 years seeking to quash same notification-Maintainability of.

Award-Remedy of reference-Whether compensation to be accepted only under protest.

Hindu Law:

Coparcenary-Whether can be pleaded between brothers only excluding father.

Constitution of India:

Articles 136, 226-Plea-Not raised in writ petition-Whether can be entertained in appeal.

HEADNOTE:

In a writ petition filed by the father and the brother of the appellant, a Notification dated 6.8.1973 issued under ss. 4 and 6 of the Land Acquisition Act, 1894 was quashed by the High Court. The Letters Patent Appeal filed by the State was dismissed by the Division Bench of the High Court, but it restricted to quashing of the notification only in relation to the land of the two respondents in that appeal i.e., the father and the brother of the appellant herein.

The appellant was not a party in the writ petition filed by his father and brother. He had accepted under protest the compensation awarded by the Collector on 11.12.1973 and had filed applications for enhancement of

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compensation before the competent court.

In September, 1978, the appellant filed a writ petition before the High Court seeking to quash the same Notification dated 6.8.1973, and contended that Letters Patent Appeal was wrongly decided inasmuch as the whole Notification, and not part of it concerning the two respondents therein only, ought to have been quashed. The writ petition was heard and dismissed by the Division Bench which had decided Letters Patent Appeal. The appellant filed the appeal by special

leave to this Court.

It was contended on behalf of the appellant that writ petition filed by his father and brother must have been deemed to have been filed on his behalf also and the decision in the Letters Patent Appeal quashing the Notification under ss.4 and 6 of the Act "in so far as it related to the respondents therein" included the appellant herein also. The appellant also claimed co-ownership/coparcenary with his brother only.

Dismissing the appeal, this Court,

HELD: 1.1 There could be no co-parcenary in the presence of father between the brothers only by excluding the father. No co-parcenary was pleaded by the appellant with his father and brother. The only co-owner-ship or coparcenary was claimed with his brother. [p44F-G]

1.2 In writ petition or in the appeal before the High Court, neither appellant's father nor his brother made any representation that they were filing writ petition on behalf of the appellant either express or by necessary implication. That litigation by them was in their own right and they did not plead and coparcenary with the appellant. [p44E-F]

2. 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 its enhancement; the 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. [pp.44G-H, 45A]

A. Viswanatha Pillai and others v. Special Tahsildar for Land Acquisition No. IV & Ors., AIR 1991 SC 1966, distinguished.

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4. Section 18 of the Land Acquisition Act, makes it clear that 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 is accepted without protest the person concerned may lose his right to a reference for various matters mentioned in s.18. [p.45D-F]

5. The writ petition by the appellant was filed approximately five years after the date of Notification under Sections 4 and 6 of the Land Acquisition Act and after the award. The appellant had not challenged the acquisition of land all these years. He accepted the compensation under protest, not 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 Section 18 of the Land Acquisition Act. It was not shown that he withdrew the compensation in pursuance of any order of any Court to safeguard any other rights. This was also not his contention before the Division Bench dismissing his writ petition. Such a plea cannot be permitted in the instant appeal. [p.45A-B, D, G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2977 of 1979.

From the Order dated 11.9.1978 of the Punjab and

Haryana High Court in C.W.P. No. 3771 of 1978.

G.L. Sanghi, S.K. Mehta, Nand Lal Dhingra, Dhruv Mehta and Aman Vachher for the Appellant.

A. S. Sohal and G.K. Bansal for the Respondent.

The Judgment of the Court was delivered by

YOGESHWAR DAYAL, J. 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.

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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 Notification dated 6th August, 1973 issued under Sections 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 notification issued under Section 4 and 6 of the Land Acquisition Act dated 6th August, 1973. The learned 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. 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 Notification 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.

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 Patents Appeal the appellant herein, Shri Ashwani Kumar Dhingra filed a writ petition on or about 5th September, 1978 for quashing the same Notification dated 6th August, 1973 issued under Sections 4 and 6 of the Land Acquisition Act.

It also appears that in pursuance of the impugned Notification under Section 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 application 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:

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"The only contention raised before us is 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 respondent 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 us 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."

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.

Mr. G.L. Sanghi, learned counsel for appellant relied on the decision of this Court in A.Vishwanatha Pillai and others r. Special Tahsildar for Land Acquisition No. IV and others, 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

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necessary implication that he was acting on behalf of his other co-owners or coparceners and was seeking a reference on behalf of right, title and interest in the acquired property and when the reference was made in respect thereof under Section 18 they are equally entitled to receive compensation pro rata as per their shares".

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 Sections 4 and 6 of the Land Acquisition Act "in so far as it related to the respondents therein", included the appellant therein as well

We are afraid that the decision of the Supreme Court relied upon has no application No. 3465 of 1973 or Letters Patent Appeal No. 14 of 1977 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 co-parcenary is being pleaded by the appellant with his father and brother. Only co-owner-ship 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 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 stopped from challenging acquisition. Similarly, where one

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co-owner challenges acquisition, his rights will not be affected merely because other co-owner had accepted acquisition and the compensation.

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 Section 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.

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 Section 18 of the Land Acquisition Act. It is clear from the provisions of Section 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 of a reference for various matters mentioned in Section 18 of the Land Acquisition Act.

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 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

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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.

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.

R.P.

Appeal dismissed.

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JUDIS