

PETITIONER:

KARTAR SINGH @ Naranjan Singh & Ors.

Vs.

RESPONDENT:

STATE OF PUNJAB

DATE OF JUDGMENT 21/03/1995

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

VENKATACHALA N. (J)

AHMAD SAGHIR S. (J)

CITATION:

1995 AIR 1726

1995 SCC (4) 101

JT 1995 (3) 422

1995 SCALE (2) 598

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. For the lands of the appellants acquired by the notification under s.4(1) of the Land Acquisition Act, published on October 15, 1971, the Land Acquisition Collector, in his award dated January 24, 1973, awarded a sum of Rs. 1,30,949.30/-. On reference, the Addl. District Judge, by his award and decree dated August 27, 1975, enhanced the compensation at the rate of Rs.300/- per marla but, on appeal by the respondent in R.F.A. No. 15/1976, it was reduced to Rs.255/- per marla. Pending appeal, the appellants had executed and recovered the enhanced compensation with interest on May 27, 1976. The State, therefore, filed an application under s. 144 CPC on February 28, 1983 for restitution of the excess amount with interest payable thereon. The appellant had deposited principal excess amount of Rs.57,920.26 on February 21, 1985. The District Judge by his order dated March 15, 1985 while upholding restitution of the excess amount, disallowed interest payable thereon. On appeal, the High Court by the impugned order in Execution F.A. No. 1374/85 dated November 5, 1985 directed the appellants to pay interest. Thus this appeal by special leave.

3. Learned counsel for the appellants vehemently contended that in an application for restitution under s. 144 of the CPC the respondent is not entitled to the interest, since there was no direction to pay interest. We find no force in the contention. Admittedly, the appellants had realised the enhanced amount of compensation with /interest computed under s.28 of the Act.

4. Under s.144 C.P.C., the doctrine of restitution contemplates that where property was received by a decree-holder in execution of a decree which, on appeal, either in whole or in part thereof, is subsequently reversed or

varied, the court is empowered to restore to the judgment debtor what has been lost to him in execution of the decree and it is the consequence of the erroneous decree. The restitution is consequential to the variation or reversal of the decree or on its being modified or set aside. The condition precedent for restitution, therefore, is that the decree of the trial court must be reversed or varied in appeal or otherwise. The word "consequentially" lays emphasis on the obligation on the party to the suit or proceedings who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. The court therefore, is bound to restore the parties, as far as they can be, to the same position they were at the time when the court by its erroneous action had displaced them from it. Equally where a sum of money was recovered in execution by a decree which was subsequently reversed or varied, the judgment-debtor is entitled to get back not only the sum recovered but also the interest thereon or damages or compensation for the period that the amount had been retained by him. The reason being that the person who has taken the money improperly from the judgment-debtor has to

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restitute to him the amount as a corollary with interest during the time that the money has been withheld from him. The owner or the person interested in the land when recovered the compensation under the award and decree which was reversed, varied or modified on appeal, the court is empowered under s.144 CPC to restitute the amount to the State with interest or quantified damages or by way of compensation.

5. It is seen that the High Court had reduced the compensation from Rs.300 to Rs.255, per marla and in the meanwhile the appellants had recovered the award amount at Rs.300/- per marla in execution with interest. So the appellants are liable to restitute the excess amount realised in execution of the decree of the reference court or appeal under s.54 with interest. Granting of interest or damage or compensation is consequential to the variation, reversal or setting aside of the enhanced compensation under s.23(1) and computation of statutory interest under s.28 on enhanced compensation and interest on solatium if paid as per the decree or order of the Court. The State is entitled to restitute of the benefit accrued to the owner in the original decree. Direction to restitute the amount with interest is within the powers conferred on the court under s. 144 of the Code. Therefore, the High Court rightly directed the appellants to refund the enhanced amount with interest since the appellants had the benefit of the money after the realisation till date of return or restitution.

6. The appeal is dismissed. No costs.

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