(2008) 07 SC CK 0133

Supreme Court of India

Case No: Civil Appeal No. 4365 of 2008 (Arising out of SLP (c) No. 13648 of 2007)

Jeewan Dhar Jain (Dead) through Lrs. and Others		APPELLANT
	Vs	
State of Haryana and Others		RESPONDENT

Date of Decision: July 14, 2008

Citation: (2008) 5 ALLMR 915 : (2008) 4 CHN 6 Supp : (2008) 8 JT 633 : (2008) 105 RD 569 : (2008) 10 SCALE 212 : (2008) 8 SCC 296

Hon'ble Judges: Tarun Chatterjee, J; Aftab Alam, J

Bench: Division Bench

Advocate: Pradeep Kr. Ghosh and Sanjay Jain, for the Appellant; Govind Goel, Prabodh Kumar and B.S. Banthia, for the Respondent

Final Decision: Dismissed

Judgement

Tarun Chatterjee, J.
Leave granted.

2. This appeal is directed against the judgment and order dated 18th of October, 2005, passed by the High Court of Punjab and Haryana at Chandigarh in Review Application No. 86- CII/2002 in Civil Revision No. 3273/2001, Review Application No. 87-CII/2002 in CR No. 3275/2001, Review Application No. 88-CII/2002 in CR. No. 3276/2001, Review Application No. 89-CII/2002 in CR No. 3277/2001, Review Application No. 90-CII/2002 in CR No. 3278/2001, Review Application No. 91-CII/2002 in CR No. 3280/2001, Review Application No. 92-CII/2002 in CR No. 3281/2001 and Review Application No. 93-CII/2002 in CR No. 3282/2001 by which the bunch of review applications filed at the instance of claimants-landowners-appellants in the connected civil revision petitions was disposed of. A bunch of 13 civil revision petitions was decided by the learned Single Judge vide judgment dated 25th of October, 2001. All the revision petitions were filed by the Haryana Urban Development Authority, Gurgaon, for whose benefit the land

belonging to the claimants-landowners was acquired. Similarly, a bunch of 15 civil revision petitions was decided by another learned Single Judge of the High Court which was filed by the Food Corporation of India, for whose benefit the land was acquired. In these cases, the learned Single Judge of the High Court followed the proposition of law laid down in judgment dated 25th of October, 2001 passed in Review Application No. 113-CII/2002 in CR No. 2842/2002. Vide an order dated 20th of May, 2001, the Executing Court allowed the application of the claimants-appellants in Review Application No. 113-CII/2002 in CR No. 2842/2002 holding that she was entitled to get interest on the solatium and to appropriate the amount already paid or deposited in the court firstly towards costs, then towards interest and then towards solatium and in the last towards principal amount. The order dated 10th of May, 2001 passed by the Executing Court was challenged by the Haryana Urban Development Authority before the High Court in Civil Revision Petition No. 2842 of 2001. Similar revision petitions were filed in other connected matters. One of the questions that arose before the learned Single Judge of the High Court for adjudication was as follows:

Whether claimants/landowners do have the right to appropriate the amount deposited by the Land Acquisition Collector as per their own discretion or the same has to be paid in view of the Scheme of the Act?

3. The learned Single Judge of the High Court relying upon the law laid down by this Court in the case of 298557 held that the claimants were not entitled to appropriate the amount deposited by the Collector at their discretion and appropriation and payment shall be made strictly in accordance with the law laid down by this Court in Prem Nath Kapoor''s case (supra). Accordingly, the aforesaid question was answered in favour of the acquiring authorities and against the claimants. The present review applications were filed by the claimants-appellants praying for review of the aforesaid decision of the learned Single Judge qua the aforesaid question. While deciding the review applications, the High Court in the impugned order made the following observations

In view of the aforesaid observations made by the Apex Court in Prem Nath Kapoor''s case (supra) and also having noticed the same in M/s. Industrial Credit and Development Syndicate, we are not inclined to take any different view than the one taken by the learned Single Judge. As a matter of fact, the learned Single Judge has placed specific reliance upon Prem Nath Kapoor''s case and as per law laid down by the Apex Court, no exception to the view expressed by the learned Single Judge can be taken. Consequently, we hold that in the land acquisition proceedings, the claimants cannot be allowed to appropriate the amount deposited by the Collector at their discretion and appropriation and payment has to be made strictly in accordance with the law laid down by this Court in Prem Nath Kapoor''s case (supra). Holding as above, the review cases were dismissed.

4. Feeling aggrieved, the claimants- appellants moved this Court and notices were issued. Subsequently, similar issue which was decided in Prem Nath Kapoor''s case,

namely, Gurpreet Singh v. Union of India, SLP No. 8408 of 2003 was referred to Constitution Bench of this Court by a three-Judge and finally the question referred before the Constitution Bench was decided in 260908 . After the above question was decided by the Constitution Bench, the matter has now come up for hearing before us. Mr. Ghosh learned senior counsel appearing for the appellants had drawn our attention at paragraph 36 of the aforesaid Constitution Bench decision at page 478, particularly the portion, namely, "but if there is any shortfall at any stage, the claimant or decree-holder can seek to apply the rule of appropriation in respect of that amount, first towards interest and costs and then towards the principal, unless the decree otherwise directs."

5. Relying on this observation, Mr. Ghosh submitted that the ratio in Prem Nath Kapoor"s case on appropriation being at different stages was justified though if at a particular stage there was a shortfall, the awardee-decree holder would be entitled to appropriate the same on the general principle of appropriation, first towards interest then towards costs and then towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment debtor while making the deposit intimating the decree holder of his intention. Relying on this observation of this Court made in the Constitution Bench, Mr. Ghosh, learned senior counsel appearing for the appellants submitted that this aspect of the matter not having been considered by the High Court either in the civil revision case or in the review petitions, it would be fit and proper for this Court to send the cases back to the Executing Court for disposal in the light of the aforesaid observations of this Court made in the Constitution Bench decision as referred to herein above. This submission of Mr. Ghosh was contested by the learned Counsel appearing on behalf of the respondents and he submitted that although the Constitution Bench decision had approved the Prem Nath Kapoor"s case, but in addition to that had also made the observation it would be fit and proper that the matter may be remitted back to the High Court for decision in the light of the observations made by this Court in the aforesaid Constitution Bench without sending the same before the Executing Court, as the execution cases have already been disposed of by the Executing Court. However, at the time of consideration, the High Court shall also take into consideration the observations made by the Constitution Bench as noted herein above be applicable to the present cases.

6. Having heard the learned Counsel for the parties and after noticing the judgment of the Constitution Bench particularly the observations on which reliance was placed by the learned Counsel for the parties, we are of the view that the impugned order be set aside and the matters may be remitted back to the High Court for decision in the light of the observations of this Court made in the Constitution Bench decision as referred to herein above. Accordingly, the impugned orders of the High Court rejecting the review petitions are set aside and the appeal is allowed to the extent indicated above. The High Court is requested to decide the review petitions as early as possible preferably within six months from the date of supply of the copy of this order. It is needless to say that in the event the High Court feels that while deciding the review petitions, it would be appropriate for it to

take up the civil revision cases as well, it will be open to the High Court to take up the review petitions also along with the civil revision cases treating the orders passed by the High Court in revision as set aside.

7. For the reasons aforesaid, we set aside the impugned orders and the appeal is allowed to the extent indicated above. We make it clear that we have not gone into the arguments advanced by the parties on the question whether the Constitution Bench decision would be applicable in the facts and circumstances of the case and it is kept to be taken into consideration by the High Court in the manner indicated above. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.