A STATE OF HARYANA & ANR.

v.

KARTAR SINGH (D) THROUGH LRS.

(Civil Appeal No. 5115 of 2005)

B NOVEMBER 29, 2012

[R.M. LODHA AND ANIL R. DAVE, JJ.]

Land Acquisition Act, 1894:

C *ss. 23(1-A), 23(2) and 28 as amended by Amendment Act, 1984 – Benefits claimed by filing application u/ss 151 and 152 CPC after the compensation enhanced by reference court and grant of 15% solatium and 6% interest by its order dated 17.5.1980 had attained finality on dismissal of State's* D *appeal and SLP by High Court and Supreme Court respectively – Held: An award and decree having become final under the LA Act cannot be amended or altered seeking enhancement of the statutory benefits under the amended provisions brought in by the Amendment Act in the LA Act* E *by filing petitions u/s 151 and s.152 of the CPC.*

Execution:

Power of executing court – Held: A plea of nullity of a decree can always be set up before the executing court – Any F *judgment and order which is a nullity never acquires finality and is thus open to challenge in execution proceedings.*

The compensation for the land of the respondent-land-owners acquired under the Land Acquisition Act, 1894, was enhanced by the reference court by its order G **dated 17.5.1980. It awarded the solatium at the rate of 15% on the enhanced amount of compensation and interest at the rate of 6% from the date of dispossession till the payment was made. The State Government's**

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appeal before the High Court and Special Leave Petition before the Supreme Court were dismissed. After the Land Acquisition Amendment Act, 1984 came into force w.e.f. 24.9.1984, the respondent made an application u/s 151 and 152 of the Code of Civil Procedure, 1908 before the High Court in the disposed of first appeal, for the benefits of the amended provisions in the Land Acquisition Act, particularly, ss. 23(1A) and 23(2). The High Court allowed the application by its order dated 28.4.1989. The respondent then filed another execution petition for execution of the award and decree dated 28.4.1989, which was resisted by the State Government. The executing court overruled the objection and held that it was not open to the executing court to go behind the decree. The revision petition of the State Government was dismissed by the High Court.

Disposing of the appeals, the Court

HELD: 1.1. Legal position is no more *res integra* that an award and decree having become final under the LA Act cannot be amended or altered seeking enhancement of the statutory benefits under the amended provisions brought in by the Amendment Act in the LA Act by filing petitions u/s 151 and s.152 of the CPC. In view of this, the award and decree passed by the High Court on 28.4.1989 has to be held to be without jurisdiction and nullity. [Para 21] [172-E-F]

***Union of India Vs. Swaran Singh and Ors.* 1996 (3) Suppl. SCR 205 (1996) 5 SCC 501; *Sarup Singh and Anr. Vs. Union of India and Anr.* 2010 (15) SCR 131= (2011) 11 SCC 198 and *State of Punjab and Anr. Vs. Babu Singh and Ors.* 1995 (2) SCR 374 =1995 Supp (2) SCC 406 – relied on.**

1.2. A plea of nullity of a decree can always be set up before the executing court. Any judgment and order

which is a nullity never acquires finality and is thus open to challenge in the execution proceedings. [Para 21] [172-F-G]

Balwant N. Viswamitra and Ors. Vs. Yadav Sadashiv Mule (Dead) through LRs and Ors. **2004 (3) Suppl. SCR 519 = (2004) 8 SCC 706 – inapplicable.**

1.3. The order of the High Court dated 1.4.2003 and the order of the Additional District Judge, dated 6.4.1999 are set aside. The execution petition filed by the respondents seeking execution of the award and decree dated 28.4.1989 stands dismissed. [Para 23] [173-B]

Case Law Reference:

2010 (15) SCR 131	**relied on**	**Para 15**
1995 (2) SCR 374	**relied on**	**Para 14**
1996 (3) Suppl. SCR 205	**relied on**	**Para 14**
2004 (3) Suppl. SCR 519	**inapplicable**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5115 of 2005.

From the Judgment & Order dated 01.04.2003 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 4158 of 1999.

WITH

C.A.No. 5096 of 2005.
C.A. No. 5097-5098 of 2005.
C.A. No. 5116 of 2005.

Manjit Singh, AAG, Punit Dutt Tyagi, Anil Antil, Tarjit Singh, Kamal Mohan Gupta, Manoj Swarup and Neha Kedia for the appearing parties.

The Judgment of the Court was delivered by

R.M. LODHA, J.

Civil Appeal No. 5115 of 2005

1. This Appeal, by special leave, has been filed under Article 136 of the Constitution of India by the State of Haryana and the Land Acquisition Collector, Urban Estate, Panchkula against the judgment and order of the Punjab & Haryana High Court dated April 1, 2003.

2. The controversy arises in this way. On May 2, 1973, the Government of Haryana issued notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'LA Act') proposing to acquire land for residential and commercial area as Sector 13 and Sector 13 Extension at Karnal, Haryana.

3. Subsequent thereto, declaration was made under Section 6 of the LA Act and then the award came to be passed by the Land Acquisition Collector on November 23, 1973 fixing the market value of the acquired land at the rate of Rs. 270/- per Biswa. The respondents' land is part of the above acquisition in the award.

4. The respondents were not satisfied with the market value determined by the Land Acquisition Collector and sought reference under Section 18 of the LA Act. The matter was referred to the civil court for determination of compensation for compulsory acquisition of the respondents' land.

5. The reference court on May 17, 1980 decided the reference(s) and enhanced compensation at the rate of Rs. 22/ - per square yard. The reference court also awarded solatium at the rate of 15% on the enhanced amount of compensation and interest at the rate of 6% from the date of dispossession till the payment was made as awarded.

6. The respondents did not carry the matter further. However, the State of Haryana was dissatisfied with the determination of compensation by the reference court and,

A accordingly, preferred first appeal before the Punjab and Haryana High Court.

7. On January 16, 1981, the first appeal preferred by the State of Haryana was dismissed by the single Judge of the High B Court and the judgment and award by the reference court was upheld. It is pertinent to mention that during the pendency of the first appeal, the respondent No. 1 had laid execution of the award passed by the reference court by making an execution application in 1980.

C 8. The State of Haryana preferred special leave petition against the award and decree of the High Court but was unsuccessful. Special leave petition was dismissed by this Court on December 12, 1983.

D 9. Vide Land Acquisition (Amendment) Act, 1984 (for short, 'Amendment Act'), LA Act came to be amended with effect from September 24, 1984. By the Amendment Act, Section 23 of the LA Act was amended. There was amendment in Section 28 of the LA Act as well. Section 30 of the E Amendment Act provided for transitional provisions.

10. On April 28, 1989, the respondents made an application under Sections 151 and 152 of the Code of Civil Procedure (for short, 'CPC') before the High Court in the disposed of first appeal against which the special leave petition F preferred by the State of Haryana had already been dismissed. By this application the respondents prayed for the benefits of the amended provisions in LA Act particularly Sections 23(1-A) and 23(2) thereof.

G 11. The High Court allowed the application made by the respondents for grant of benefits of the amended provisions on April 28, 1989 and granted benefits of the amended provisions of Sections 23(1-A) and 23(2) of the LA Act to them.

12. The respondents then filed another execution petition H

for execution of the award and decree dated April 28, 1989. On behalf of the appellants, an objection was raised that the award and decree passed by the High Court on April 28, 1989 was without jurisdiction and, therefore, not executable and enforceable.

13. The executing court, vide its order dated April 6, 1999, overruled the objection taken by the appellants and held that it was not open to the executing court to go behind the decree. The present appellants challenged the order of the executing court by filing a revision petition before the High Court. The revision petition has been dismissed by the impugned order.

14. Mr. Manjit Singh, learned Additional Advocate General, appeared for the appellants and submitted that the decree passed by the High Court on April 28, 1989 giving the benefits of amended Sections 23(1-A) and 23(2) of the LA Act to the respondents was a nullity and without jurisdiction. He relied upon the decisions of this Court in *State of Punjab and another Vs. Babu Singh and Others*[1], *Union of India Vs. Swaran Singh & Others*[2] and *Sarup Singh and Another Vs. Union of India and Another*[3].

15. Mr. Manoj Swarup, learned counsel for the respondents, in the first place distinguished the decision of this Court in *Swaran Singh*[2] by making reference to the observations made by this Court in para 7 which reads, "Admittedly, as on that date the claimants were entitled to solatium at 15% and interest at 6%". Secondly, learned counsel for the respondents submitted that *Swaran Singh*[2] did not lay down good law. He cited the decision of this Court in *Balvant N. Viswamitra and others Vs. Yadav Sadashiv Mule (Dead) through LRs. and others*[4] to draw a distinction between a 'void

1. 1995 Supp (2) SCC 406.
2. (1996) 5 SCC 501.
3. (2011) 11 SCC 198.
4. (2004) 8 SCC 706.

A decree' and an 'illegal, incorrect and irregular decree'. Learned counsel submitted that the judgment and decree passed by the High Court on April 28, 1989 could at best be termed as an 'illegal, incorrect and irregular decree' but surely it is not a 'void decree'. He also referred to the decision of this Court in
B *National Agricultural Cooperative Marketing Federation of India Ltd. and another Vs. Union of India and Others*[5] to butress his point that the decree dated April 28, 1989 having attained finality as its correctness, legality and validity was never challenged and, therefore, could not have been set up in the
C execution proceedings.

16. In *Babu Singh*[1] a two Judge bench of this Court was concerned with an appeal filed by the State of Punjab and its functionary against the judgment and order of the High Court whereby the High Court allowed the applications made by the
D expropriated owners under Sections 151 and 152, CPC to amend the decree by awarding the benefits of enhanced solatium and additional amount available under Section 23(1-A) and Section 23(2) and Section 28 of the LA Act as amended by the Amendment Act. This Court held that the High
E Court was clearly without jurisdiction in entertaining the applications under Sections 151 and 152, CPC to award additional benefits under the amended provisions of the LA Act. The discussion of this Court in *Babu Singh*[1] reads as follows:

F "4. It is to be seen that the High Court acquires jurisdiction under Section 54 against the enhanced compensation awarded by the reference court under Section 18, under Section 23(1) with Section 26 of the Act. The Court gets the jurisdiction only while enhancing or declining to
G enhance the compensation to award higher compensation. While enhancing the compensation "in addition" to the compensation under Section 23(1), the benefits enumerated under Section 23(1-A) and Section 23(2) as also interest on the enhanced compensation on the amount

H 5. (2003) 5 SCC 23.

which in the opinion of the Court "the Collector ought to have awarded in excess of the sum which the Collector did award", can be ordered. Thus, it would be clear that civil court or High Court gets jurisdiction when it determines higher compensation under Section 23(1) and not independently of the proceedings.

5. This is the view taken by this Court in *State of Punjab v. Satinder Bir Singh (sic.)*, disposed of on 22-2-1995.The same ratio applies to the facts in this case, since as on the date when the judgment and decree was made by the High Court, the law was that the High Court should award solatium at 15% and interest at 6%. Payment of additional amount as contemplated under Section 23(1-A) cannot be made since the notification under Section 4(1) was dated 11-12-1974 and even the award of the District Court was dated 23-2-1978. Under these circumstances, the LA Amendment Act 68 of 1984 has no application and there is no error in the award or the decree as initially granted. The High Court was clearly without jurisdiction in entertaining the applications under Sections 151 and 152 to award the additional benefits under the Amendment Act 68 of 1984 or to amend the decrees already disposed of."

17. In *Swaran Singh*[2] the correctness of the decree passed by the High Court giving the expropriated owners benefits of amended provisions of solatium and interest under Section 23(2) and proviso to Section 28 of the LA Act as amended by the Amendment Act was in issue. That was a case where notification under Section 4(1) of the LA Act was published on June 10, 1977 proposing to acquire the land for extension of Amritsar Cantonment at Village Kala Ghanpur. The award was made by the Collector under Section 11 on August 28, 1978. On reference under Section 18, the reference court enhanced the compensation by its award and decree dated December 24, 1981. The award and decree passed by the reference court was confirmed by the single Judge as well as by the Division

A Bench of the High Court and special leave petitions from the judgment of the High Court were dismissed. On July 28, 1987, after the amendments were made in LA Act by the Amendment Act, the owners made applications under Sections 151 and 152, CPC for award of enhanced solatium and interest. The B High Court allowed the applications. When execution applications were laid, the executing court dismissed them, but on revision the High Court allowed them and directed execution of enhanced solatium and interest. It is from this order that the appeals, by special leave, were preferred by the Union of India C before this Court. This Court in para 7 and 8 (pages 502-503) held as under :

"7. It is settled law that after the Reference Court has granted an award and decree under Section 26(1) of the Act which is an award and judgment under Section 26(2) D of the Act or on appeal under Section 54, the only remedy available to a party is to file an application for correction of clerical or arithmetical mistakes in the decree. The award of solatium and interest would be granted on enhancement of compensation when the court finds that E the compensation was not correct. It is a part of the judgment or award. Admittedly, as on that date the claimants were entitled to solatium at 15% and interest at 6%. The Amendment Act 68 of 1984 came into force as on 24-9-1984. It is settled law that if the proceedings are F pending before the Reference Court as on that date, the claimants would be entitled to the enhanced solatium and interest. In view of the fact that the Reference Court itself has answered the reference and enhanced the compensation as on 24-12-1081, the decree as on that G date was correctly drawn and became final.

8. The question then is whether the High Court has power to entertain independent applications under Sections 151 and 152 and enhance solatium and interest as amended under Act 68 of 1984. This controversy is no H

longer res integra. In *State of Punjab V. Jagir Singh* [1995 Supp.(4) SCC 626] and also in catena of decisions following thereafter in *Union of India V. Pratap Kaur* [(1995) 3 SCC 263]; *State of Maharashtra V. Maharau Srawan Hatkar* [(1995) 3 SCC 316 : JT 1995 (2) SC 583]; *State of Punjab V. Babu Singh* [1995 Supp. (2) SCC 406]; *Union of India V. Raghubir Singh* [(1989) 2 SCC 754]; and *K.S. Paripoornan V. State of Kerala* [(1994) 5 SCC 593] this Court has held that the Reference Court or the High Court has no power or jurisdiction to entertain any applications under Sections 151 and 152 to correct any decree which has become final or to independently pass an award enhancing the solatium and interest as amended by Act 68 of 1984. Consequently, the award by the High Court granting enhanced solatium at 30% under Section 23 (2) and interest at the rate of 9% for one year from the date of taking possession and thereafter at the rate of 15% till date of deposit under Section 28 as amended under Act 68 of 1984 is clearly without jurisdiction and, therefore, a nullity. The order being a nullity, it can be challenged at any stage. Rightly the question was raised in execution. The executing Court allowed the petition and dismissed the execution petition. The High Court, therefore, was clearly in error in allowing the revision and setting aside the order of the executing Court."

18. In *Swaran Singh*[2] it has been clearly held that the High Court has no power to entertain an independent application under Section 151 and Section 152 of the CPC and enhance solatium and interest as amended under the Amendment Act.

19. The sentence "Admittedly, as on that date the claimants were entitled to solatium at 15% and interest at 6%" in para 7 in *Swaran Singh*[2] is hardly a distinguishing feature. *Swaran Singh*[2] is on all fours and is squarely applicable to the present fact situation. We have no reason, much less a

A justifiable reason, to doubt the correctness of law laid down in *Swaran Singh*[2].

20. *Swaran Singh*[2] has been referred to by this Court in para 26 (page 208) of comparatively recent judgment in *Sarup* B *Singh*[3] and followed. In para 25 (page 208 of the report) this Court in *Sarup Singh*[3] held as under :

> "25. In the present cases the judgment and order passed by the High Court before Amendment Act of 68 of 1984 became final and binding as no appeal was brought to this C Court thereafter. However, consequent to the amendment in the Land Acquisition Act, the appellants had filed civil miscellaneous applications for the grant of 30% solatium and 9% interest for first year and 15% interest thereafter. This Court has also held in a catena of decisions that a D decree once passed and which has become final and binding cannot be sought to be amended by filing petition under Sections 151 and 152, CPC."

21. Legal position is no more *res integra* that an award E and decree having become final under the LA Act cannot be amended or altered seeking enhancement of the statutory benefits under the amended provisions brought in by the Amendment Act in the LA Act by filing petitions under Section 151 and Section 152 of the CPC. In view of this, the award and F decree passed by the High Court on April 28, 1989 has to be held to be without jurisdiction and nullity. It goes without saying that a plea of nullity of a decree can always be set up before the executing court. Any judgment and order which is a nullity never acquires finality and is thus open to challenge in the executing proceedings. G

22. The decisions of this Court in *Balvant N. Viswamitra*[4] and *National Agricultural Cooperative Marketing Federation of India Ltd.*[5] relied upon by the learned counsel for the respondents have no relevance to the controversy in hand. The H propositions of law laid down therein are beyond question but

these propositions have no application to the facts of the present case. A

23. Civil Appeal is, accordingly, allowed. The order of the High Court dated Aprii 1, 2003 and the order of the Additional District Judge, Karnal dated April 6, 1999 are liable to be set aside and are set aside. The execution petition filed by the respondents seeking execution of the award and decree dated April 28, 1989 stands dismissed. The parties shall bear their own costs. B

Civil Appeal No. 5116 of 2005 C

24. In view of judgment passed in Civil Appeal 5115/2005 above, this Civil Appeal is also allowed in the same terms. The parties shall bear their own costs.

Civil Appeal No. 5096 of 2005 and Civil Appeal Nos. 5097-5098 of 2005 D

25. In view of the judgment passed in Civil Appeal 5115 of 2005 and Civil Appeal No. 5116 of 2005 today, these Civil Appeals do not survive and stand disposed of as such. E

R.P. Appeals disposed of.