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**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No.201/2003

Reserved on: 01.03.2024
Pronounced on: 15.03.2024

Union of India

.....Appellant

Through: Mr. Rohan Nanda, CGSC

vs

Chain Singh & Ors.

.....Respondent(s)

Through: Mr. Nigam Mehta, Advocate

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

1. Appellant-Union of India through the medium of this Civil Misc. Appeal has challenged the Award dated 24.05.2003 passed by the Arbitrator (District Judge, Udhampur) in a case titled "Chain Singh & Ors. v. Union of India & Anr.", whereby learned Arbitrator had assessed the compensation of the acquired land @ Rs.30,000/- per kanal along with interest @ 9% per annum from the date of Reference till final realization of the awarded sum.

2. Before advertng to the grounds urged in the memo of appeal, it shall be apt to have an overview of the matter. Government of Jammu & Kashmir, through its Home Department vide communication No. CL-25/86 dated 10.05.1988, after service of the notice to the owners of the land, to show cause within specified period, as to why their land should not be acquired and there being no objection conveyed, acquired their land measuring 543 kanals and 03 marlas situate at Delichak and Sansoo Tehsil and District Udhampur, including

some Shamilat and State land, in terms of Sub-section (1) of Section 07 of the J&K Requisition and Acquisition of Immovable Property Act 1968 (for short RAIP Act).

3. Deputy Commissioner, Udhampur, being competent authority under J&K RAIP Act vide his No. CL/KAS/4724/ACQ/726-27/89 dated 27.02.1989 assessed the compensation of aforementioned acquired land as per following rates:

i.	Warhal Mandi	Rs.10,000/- Per Kanal
ii.	Banjar Qadim	Rs.9,000/- Per Kanal
iii.	Gair Mumkin	Rs. 7,000/- Per Kanal.

4. Being not satisfied and having been aggrieved of the rates of acquisition compensations, the land owners of the land measuring 87 Kanals and 16 Marlas, out of the total acquired land, situated in Village Sansoo sought arbitration. State Government vide notification No. Home/CL-25/86 dated 02.09.1993, appointed District Judge Udhampur, as Arbitrator.

5. Based on the pleadings of the parties, learned Arbitrator settled following issues for deciding the dispute regarding compensation:

- i. Whether the Collector did not pay the proper market rate of the land to the applicant if so what was the prevailing market rate of the land acquired on the relevant date? OPP**
- ii. Whether there existed 223 trees of Shesham Mulbery and other Tunu trees having different girth and length and more than 150 trees have been removed by raising construction "Ashok Vihar" and their costs and compensation was not assessed and paid by the Collector? OPP**
- iii. If issue No. 2 is proved in affirmative what was the costs of the trees at the time of acquisition on relevant date?**
- iv. Whether the applicants are entitled to any Jabrana/Solatum @ 30% and rate of interest @ 12% Per Annum on awarded amount from the date of application?**
- v. To what relief the petitioners are entitled to?**

6. Learned Arbitrator vide his Award dated 24.05.2003, assessed the compensation of the land of the applicants @ Rs.30,000/- along with interest @

9% per annum, from the date of Reference till final realization of the awarded amount.

7. The appellant for whom the land had been acquired, being aggrieved of the Award passed by the learned Arbitrator, challenged the same, through the medium of this appeal, assailing it primarily on the grounds that the compensation has been awarded in a most mechanical and casual manner, overlooking the evidence on record; that having regard to topography, location and situated away from National Highway, the compensation awarded was highly excessive and exaggerated; secondly interest was granted @ 9% per annum, whereas it was not payable under the RAIP Act, as has been held by the Hon'ble Apex Court in various judgments.

8. Learned counsel for appellant, submits that though the Award has been challenged, both on the rate of compensation, as well as interest, however, appellant now does not wish to question the rate of compensation, in view of the compensation having been settled at the same rate for the other land acquired, by Hon'ble Supreme Court. He, however, argued that interest could not have been granted, in view of judgments of the Hon'ble Supreme Court, as such, appellant seeks modification of the Award, by setting aside the interest part of the Award not being admissible. To buttress his argument, learned counsel has placed reliance upon **Delhi Development Authority v. Diwan Chand Anand & Ors.** reported as **2022 (10) SCC 428** and **Union of India & Ors. v. Dhanwanti Devi & Ors.** [Civil Appeal No. 11359 of 1996 (arising out of SLP (C) No. 6132 of 1993) dated 21.08.1996].

9. Learned counsel for the respondents, *ex adverso*, argued that as the appellants had failed to bring on record, LRs of respondents No. 01, 04, 26, 31, 32 and 36, the appeal not only abates against those respondents, who had died,

but abates as a whole; that as such the appeal cannot be heard on merits, on any point or ground and is liable to be dismissed as abated. He has, vehemently, argued that in case of abatement of appeal as regards some of the respondents, the impugned decree/Award in their favour shall remain undisturbed, in view of the dismissal of the appeal vis-a-vis those respondents and shall attain finality, whereas, the impugned decree/Award, as regards the surviving respondents, the appeal against them, if heard on merits and if the appeal against them finds favour with this Court and the impugned decree/Award is modified, it shall result into conflicting decrees/Awards in the same appeal, with respect to the same subject matter. He placed reliance upon **Sunkara v. Sage Subha Raju & Ors.** reported as **(2019) 11 SCC 787**.

10. Heard learned counsels for the parties, perused the record of the case and considered the matter.

11. The admitted position on record is that prior to acquisition, properties were under requisition under J&K RAIP Act. The land in question was in possession of the Army since the year 1948 or so and they were paying rent till it was acquired.

12. The first and foremost question which calls for consideration by this Court is as to whether this appeal is required to be heard on merits, when it appears that against some of the respondents, who died during the proceedings before this Court, appellant has failed to lay a motion to bring on record their legal representatives/heirs, the appeal as a whole abates, as has been argued by the learned counsel for the respondents.

13. Hon'ble Apex Court in **Delhi Development Authority (Supra)**, while discussing Rule 1 of Order XXII of CPC has held in paragraph 9.4 that one co-owner can file a suit and recover the property against strangers and that the

decree would enure to all the co-owners and that it cannot be said that on not bringing the legal representatives of the some of the co-sharers-defendants-respondents in appeal, the appeal would abate as a whole. Paragraph 9.4 being relevant on the subject is extracted as under:

“9.4 As observed and held by this Court in the case of K. Vishwanathan Pillai (supra), the co-owner is as much an owner of the entire property as a sole owner of the property. No co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other hand, he has right, title and interest in every part and parcel of the joint property. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner in the property. It is observed that, therefore, one co-owner can file a suit and recover the property against strangers and the decree would enure to all the co-owners. The aforesaid principle of law would be applicable in the appeal also. Thus, in the instant case, when the original plaintiffs – two co-owners instituted the suit with respect to the entire suit land jointly owned by the plaintiffs as well as defendants nos. 9 to 39 and when some of the defendants/respondents in appeal died, it can be said that estate is represented by others – more particularly the plaintiffs/heirs of the plaintiffs and it cannot be said that on not bringing the legal representatives of the some of the cosharers-defendants-respondents in appeal the appeal would abate as a whole.”

14. Rule 1 of Order XXII of CPC provides that death of the plaintiff or defendant shall not cause the suit to abate if the right to suit survives and Rule 2 of CPC provides that where there are more plaintiffs or defendants than one and one of them dies and where the right to suit survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants. Order XXII of CPC is *mutatis mutandi* applicable to the appeals as well. In a case titled **State of Punjab v. Nathu Ram** reported as **AIR 1962 SC 89** wherein Punjab Government had acquired certain pieces of land belonging to two brothers jointly and upon their refusal to accept the compensation offered, their joint claim was referred to arbitration and an award was passed in their favour which was, however, challenged by the State

Government in appeal before the High Court. During the pendency of the appeal, one of the brothers died, but no application was filed within time to bring on record his legal representatives. High Court dismissed the appeal titled **Province of East Punjab v. Labhu Ram** reported as **1954 SCC OnLine P&H 132** observing that it had abated against the deceased brother and consequently abated against the surviving brother too. The order passed by the High Court was assailed before the Apex Court by certificate of fitness. Apex Court while dismissing the appeal and affirming the views of the High Court enunciated the principles concerning the effect of abatement and explained as to why in case of joint and indivisible decree, the appeal against the surviving respondent(s) cannot be proceeded with and has to be dismissed as a result of its abatement against the deceased respondents; the basic reason being that in the absence of the legal representatives of deceased respondent, the appellate Court cannot determine between appellant and the legal representatives anything which may affect the rights of the legal representatives. Apex Court pointed out that by abatement of appeal *qua* the deceased respondent, the decree between the appellant and the deceased respondent becomes final and appellate Court cannot, in any way, modify that decree directly or indirectly. Hon'ble Apex Court held that the question whether a Court can deal with such matters or not, will depend on the facts of each case and, therefore, no exhaustive statement can be made about the circumstances when this is possible or is not possible.

15. It may, however, be stated that ordinarily the considerations which weigh with the Court in deciding upon this question, are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the

decision of the controversy before the Court. The test to determine this has been described in diverse forms and court will not proceed with an appeal:

- (a) **When the success of the appeal may lead to the court's coming to a decision which may be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject matter between the appellant and the deceased respondent;**
- (b) **When the appellant could not have brought the action for the necessary relief against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed.**

16. The Apex Court, in case titled **Vennigalla Kotswaramma v. Malampati Suryamba & Ors.** reported as **(2003) 3 SCC 272** observed that nature and extent of the abatement in a given case and the decision to be taken thereon will depend upon the facts of each case and, therefore, no exhaustive statement can be made either way and that the decision will ultimately depend upon the fact whether the decree obtained was a joint decree or a separate one. It is further observed that this question cannot and should not be tested merely on the format of the decree under challenge or it being one or the manner in which it was dealt with before or by the Court which passed it. Thus, as observed and held by the Court:

- (i) **The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives;**
- (ii) **If there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made 14 on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants (Order 22 Rule 2);**
- (iii) **where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Where within the time limited by law no application is made under sub-rule 1 of Order 22 Rule 4, the suit shall abate as against the deceased defendant;**

- (iv) the provision of Order 22 shall also apply to the appeal proceedings also.

17. A similar matter had been considered by the Apex Court in Sunkara's case reported as **2019 (11) SCC 787** wherein, while discussing the provision of Order XXII Rule 4 of CPC, it has been held that in the event of appeal being allowed as against the remaining defendants, there would be two contradictory decrees in the same suit with respect to the same subject matter; one decree would be in favour of the defendants who are deleted or dead and whose legal representatives have not been brought on record, while other decree would be against the defendants who are still on record in respect of the same subject matter and in view of the conflicting decrees passed in the same subject matter, it was held that the appeal, as a whole, would abate. Paragraphs 12, 13 and 14 being relevant are extracted as under:

“12. Order 22 Rule 4, CPC lays down that where within the time limited by law, no application is made to implead the legal representatives of a deceased defendant, the suit shall abate as against a deceased defendant. This rule does not provide that by the omission to implead the legal representative of a defendant, the suit will abate as a whole. If the interests of the co-defendants are separate, as in the case of co-owners, the suit will abate only as regards the particular interest of the deceased party. In such a situation, the question of the abatement of the appeal in its entirety that has arisen in this case depends upon general principles. If the case is of such a nature that the absence of the legal representatives of the deceased respondent prevents the court from hearing the appeal as against the other respondents, then the appeal abates in toto. Otherwise, the abatement takes place only in respect of the interest of the respondent who has died. The test often adopted in such cases is whether in the event of the appeal being allowed as against the remaining respondents there would or would not be two contradictory decrees in the same suit with respect to the same subject matter. The court cannot be called upon to make two inconsistent decrees about the same property, and in order to avoid conflicting decrees the court has no alternative but to dismiss the appeal as a whole. If on the other hand, the success of the appeal would not lead to conflicting decrees, then there is no valid reason why the court should not hear the appeal and adjudicate upon the dispute between the parties.

13. In the matter on hand, the absence of certain defendants who have been deleted from the array of parties along with the absence of legal representatives of a number of deceased defendants will prevent the court from hearing the appeals as against the other defendants. We say so because in the event of these appeals being allowed as against the remaining defendants, there would be two contradictory decrees

in the same suit in respect of the same subject matter. One decree would be in favour of the defendants who are deleted or dead and whose legal representatives have not been brought on record; while the other decree would be against the defendants who are still on record in respect of the same subject matter. The subject matter in the suit is the validity of the two Wills. The Courts including the Division Bench of the High Court have consistently held that the two Wills are proved, and thus Veeraswamy being the beneficiary under the two Wills had become the absolute owner of the suit properties in question. Such decree has attained finality in favour of the defendants who are either deleted or dead and whose legal representatives have not been brought on record. In case these appeals are allowed in respect of the other defendants, the decree to be passed by this Court in these appeals would definitely conflict with the decree already passed in favour of the other defendants.

14. As mentioned supra, the Court cannot be called upon to make two inconsistent decrees about the same subject matter. In order to avoid conflicting decrees, the Court has no alternative but to dismiss the appeals in their entirety (see the judgment of this Court in the case of *Shahazada Bi vs. Halimabi*, (2004) 7 SCC 354).”

18. So far as appeal on hand is concerned, respondents 1, 7 & 32 were stated to have died as has been recorded in interim order dated 06.08.2014 passed by this Court whereas respondents No. 1, 4, 6, 26, 31 and 36 were reported to have died, as is indicated in the interim order dated 28.08.2023, however, appellant did not choose to lay a motion for bringing on record their legal heirs within the stipulated period or even thereafter and appeal against all those respondents who expired during the pendency of this appeal abated against them. Since appeal against them is to be dismissed for abatement meaning thereby impugned Award shall attain finality on the rates of compensation as well as interest against the respondents who have died. Appellant, as submitted by its counsel, wants that appeal be heard on merits with regard to other respondents, in case they succeed in the appeal on merits either with regard to rate of compensation or with regard to payment of interest, to which appellant submits that they are not entitled to, shall amount to another decree and in view of the law laid down by the Hon’ble Apex Court in **Sunkara’s case (supra)**, two conflicting decrees are not permissible in the same appeal one against those

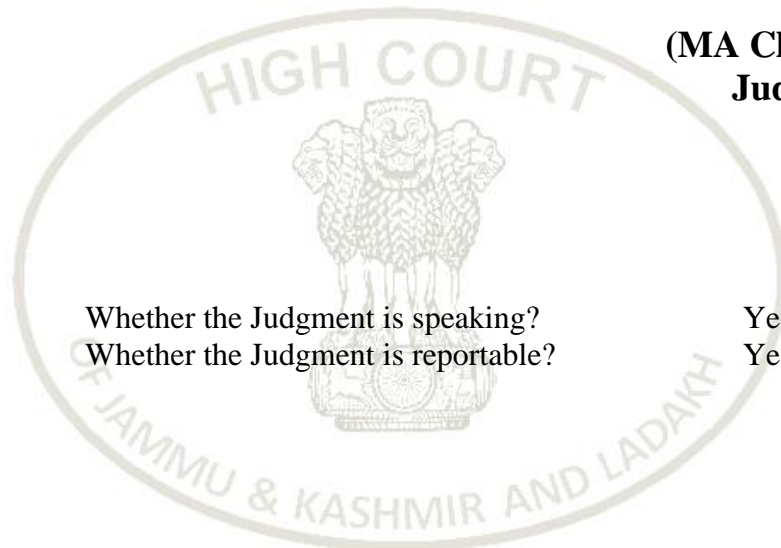
who have died and the impugned decree is to be affirmed vis-a-vis those respondents and the other as against the surviving respondents, as such, and in such a situation, the present appeal is liable to be abated as a whole.

19. Since the appeal has been held liable to be abated as a whole, the merit of the case cannot be gone into as projected by the learned counsel for the appellant though there may be merit in his submission that under the provisions of RAIP Act, 1968, the land owners are not entitled to interest on solatium.

20. Having regard to the aforementioned discussion and reasons stated hereinabove, the appeal is dismissed having been abated as a whole. As a result the impugned Award is upheld and maintained.

**(MA Chowdhary)
Judge**

Jammu
15.03.2024
Paramjeet



Whether the Judgment is speaking?
Whether the Judgment is reportable?

Yes/No
Yes/No