

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

CMPMO No.405 of 2020

Decided on 24th November 2025

General Manager, Northern Railway

...Petitioner

Versus

Smt. Kamla Devi and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting? Yes.

For the petitioner : Mr. Shivpal Manhans, Advocate.

**For the respondents : Mr. Atharv Sharma, Advocate,
for respondents No.1 to 3.**

**: Mr. Pushpinder Jaswal,
Additional Advocate General,
for respondent No.4.**

Ajay Mohan Goel, Judge (*Oral*)

By way of this petition filed under Article 227 of the Constitution of India, the petitioner has assailed the order passed by the learned Additional District Judge-II, Una, District Una, H.P., in terms whereof, the execution petition filed by the respondents herein qua the payment of enhanced compensation in terms of the award passed by the learned Reference Court in a Reference raised by the co-owners was

allowed by directing the present petitioner to pay enhanced compensation to the respondents herein as was awarded in favour of the co-owners by the learned Reference Court.

2. Brief facts necessary for the adjudication of this petition are that post acquisition of land of the petitioner, though, the petitioner did not prefer any Reference under Section 18 of the Land Acquisition Act, but the other co-owners did. In the Reference filed by them the award amount was enhanced. On the basis of the award passed by the learned Reference Court, an Execution Petition was filed by the present respondents, which was allowed by the learned Executing Court by returning the following findings:-

“From the perusal of the record it is transpires that Award in Land Acquisition petition titled as "Pyare Lal & other vs. LAC & another was passed on 13.05.2015 awarding enhancement in compensation by this court. The petitioners are also co-owner of the land under reference. From the perusal of the award it is transpires that the land acquired in the above noted case bears Khasra No. 2405/1075, 1078, 1096 comprised in Khatauni No. 204 min and Khewat No. 111 min as entered in Jamabandi for the year 2010-2011 situate in Village Mubarikpur, Tehsil Amb, District Una (HP), which was jointly owned by the applicants alongwith the petitioners in the above noted case of Pyare Lal & other vs. LAC. The learned counsel for petitioner has also relied upon Dinesh Kumar & Ors. vs. State of Himachal

Pradesh & Anr. AIR 2012 Himachal Pradesh 68 the Hon'ble High Court has held that it is manifest that the claim for enhanced compensation by a co-owner at par with other co-owners in whose favour an award has been passed is based on his own right as a co-owner irrespective of any claim for re-determination of the amount of compensation on the basis of award of the court under Section 28-A of the Act. Therefore in view of the law cited by the learned counsel for the petitioners the present objection of the respondent No.2 is not maintainable. Hence, dismissed. Let the matter be listed for making payment for 22.01.2020."

3. Feeling aggrieved, the petitioner has filed this petition.

4. Learned counsel for the petitioner has argued that in light of the fact that no Reference was filed by the present respondents against the award passed by the Land Acquisition Collector, they were not entitled for any enhancement and that too in the Execution Petition and the learned Executing Court has erred in not appreciating this fact. Learned counsel has relied upon the judgments of the Hon'ble Supreme Court in 1984 (4) SCC 90, titled J.K. Cotton Spinning and Weaving Mills Co. Ltd. versus State of U.P. and others, 1996(9) SCC 84, titled Ambey Devi v. State of Bihar and another, 1997(7) SCC 88, titled as Irshad Ali and others versus Hazi Abdul Sukhur Mozumdar and others and 1996(4) SC 469 titled Ramesh

Singh (died) through LRs versus State of Haryana in support of his contention.

5. On the other hand, learned counsel for the respondents has referred to the judgments of the Hon'ble Supreme Court in AIR 1991, SC 1966, titled A. Viswanatha Pillai and others versus Special Tahsildar for Land Acquisition and AIR 2003 SC 620, titled Jalandhar Improvement Trust v. State of Punjab and others as also the judgment of the Hon'ble Coordinate Bench in Civil Revision No.194 of 2018, titled Lesru Ram (deceased) through LR's Kalu Devi and others versus Collector Land Acquisition NHPC and another, decided on 24.09.2018 and submitted that in light of the law laid down by the Hon'ble Supreme Court as well as the Hon'ble Coordinate Bench of this Court, there is no infirmity in the order under challenge as the co-owner has a right to claim enhanced compensation as might be awarded in favour of the other co-owners by the learned Reference Court.

6. Having heard learned counsel for the parties and having perused the impugned order as well the judgments relied upon by the learned counsel for the parties, this Court is

of the considered view that there is no infirmity in the order under challenge so as to call for any interference under Article 227 of the Constitution of India.

7. The order passed by the learned Executing Court is on the basis of the judgment of this Court, which finds mention therein. Judgments that have been relied upon by the learned counsel for the petitioner of the Hon'ble Supreme Court in the considered view of this Court do not come to the rescue of the petitioner. In *Irshad Ali and others versus Hazi Abdul Sukhur Mozumdar (supra)* and *Ramesh Singh (died) through LRs versus State of Haryana (supra)* the petitioners therein had unsuccessfully assailed the award passed by the learned Reference Court and on account of finality having been achieved in their respective cases, Hon'ble Supreme Court did not grant them the relief prayed for.

8. Though, in *Ambey Devi versus State of Bihar (supra)*, Hon'ble Supreme Court was pleased to hold that application under Section 18(1) of the Land Acquisition Act by one co-sharer cannot be treated as one made on behalf of all the co-sharers and that co-sharer is not entitled to any higher

compensation pursuant to an award made by the Reference Court at the instance of the other co-owners, however, prior to that Hon'ble Supreme Court in AIR 1991, SC 1966, titled A. Viswanatha Pillai and others versus Special Tahsildar for Land Acquisition was pleased to hold as under:-

"It is surprising that the State having acquired the property of a citizen would take technical objections regarding the entitlement of the claim. The State certainly is right and entitled to resist claim for enhancement and lead evidence in rebuttal to prove the prevailing price as on the date of notification and ask the court to determine the correct market value of the lands acquired compulsorily under the Act. But as regards the persons entitled to receive compensation are concerned it has no role to play. It is for the claimants inter se to lay the claim for compensation and the court would examine and award the compensation to the rightful person. As seen in the objections pursuant to the notice under [section 9\(3\)](#) and [10](#), Venkatchalam made necessary averments that himself and his brothers had 1/4 share in the Anicut and irrigation system pursuant to the partition deed referred to therein. In his reference application under [section 18](#) also he reiterated the same and stated that the amount awarded by the Collector was inadequate and that they were dissatisfied with it and that they are entitled to more. It is settled law that one of the co-owners can file a suit and recover the property against strangers and the decree would enure to all the co-owners. It is equally settled law that 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 or coparcenery under Hindu Law by all the coparceners. In Kanta Goel

v.B.P. Pathak & Ors., [1977] 3 S.C.R. 4 12, this Court upheld an application by one of the co-owners for eviction of a tenant for personal occupation of the co-owners as being maintainable- The same view was reiterated in [Sri Ram Pasricha v. Jagannath & Ors.](#), [1977]1 S.C.R. 395 and [Pal Singh v. Sunder Singh](#) (dead) by Lrs. & Ors., [1989] 1 S.C.R. 67. A co-owner is as much an owner of the entire property as a sole owner of the property. It is not correct to say that a co-owner's property was not its own. 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. That position will undergo a change only when partition takes place and division was effected by metes and bounds. Therefore, a co-owner of the property is an owner of the property acquired but 'entitled to receive compensation pro-rata. The State would plead no waiver nor omission by other co-owners to seek reference nor disentitle them to an award to the extent of their legal entitlement when in law they are entitled to. Since the acquired property being the ancestral coparcenary and continued to be kept in common among the brothers and the income derived therein was being shared in proportion of their shares by all the brothers it remained as joint property. As co-owners everyone is entitled to 1/4 share therein. It was also laid by this Court in a recent judgment in [Ram Kumar & Ors. v. Union of India & Ors.](#), [1991] 1 SCR 649 that it is the duty of the Collector to send full information of the survey numbers under acquisition to the court and make reference under [section 18](#) and failure thereof is illegal. The same ratio would apply to the facts in this case as well. When one of the co-owner 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 necessary implication that he was acting on his behalf and on behalf of his other co-

owners or coparceners and was seeking a reference on behalf of other co-owners as well. What was acquired was their totality 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. The courts below committed manifest error in refusing to pass an award and payment thereof to the appellants merely on the ground that there was no mention in this regard in the reference application or two of them sought reference in respect of two awards and the last one made no attempt in their behalf. The claimants are entitled to payment of the enhanced award by the Civil Court pro-rata of their 1/4 share each with 15 per cent solatium and 4 per cent interest as awarded by the Civil Court. The appeals are accordingly allowed with costs of this Court.”

9. Thereafter, in Jalandhar Improvement Trust v. State of Punjab and others (supra) again, Hon'ble Supreme Court has been pleased to hold that one co-owner is entitled to have the benefit of the enhanced compensation given in respect of the other co-owners in a reference made at his instance in respect of the land acquired, which belonged to all of them.

10. Similar view was taken by this Court in AIR 2012, Himachal Pradesh 68, titled Dinesh Kumar and others versus State of Himachal Pradesh and others, in which this Court after placing reliance upon the judgments of the Hon'ble Supreme Court was pleased to hold as under:-

"In Jalandhar Improvement Trust v. State of Punjab and others (supra) the Hon'ble Apex Court while placing reliance upon A. Viswanatha Pillai & others (supra) has laid down as under vide para 5:

"5. Having regard to the view we propose to take and the manner of disposal intended to be given, it is unnecessary for us to even advert to the relevance or applicability of Section 28-A of the Act to the case of the nature before us. The 4th respondent indisputably is a co-owner along with her children who were added as petitioners 2 to 5 to the award dated 5-2-1986, in which case, even on the first principles of law one co-owner is entitled to have the benefit of the enhanced compensation given in respect of the other co-owners in a reference made at his instance in respect of the land acquired, which belonged to all of them, jointly. So far as the fact that in this case the 4th respondent's application for reference under Section 18 was rejected by the Tribunal ultimately on the ground that the reference made on a belated application, does not make any difference and, is no reason, in our view to differentiate the claims of such co-owners whose claims came to be really sustained and that of the 4th respondent, for differential treatment. We are fortified to some extent in the view expressed by this Court in the decision reported in (AIR 1991 Supreme Court P. 1966), A. Vishwanath Pillai & Ors. v. Special Tehsildar for land Acquisition."

Thus, it is manifest that the claim for enhanced compensation by a co-owner at par with other co-owners in whose favour award has been passed is based on his own right as a co-owner irrespective of any claim for re-determination of the amount of compensation on the basis of award of the court under Section 28-A of the Act.

In view of the above, the petition is allowed. Consequently, the impugned order dated 05.11.2007 is set aside and the petitioners are held entitled for enhanced pro rata compensation along with interest and other benefits such as solatium

etc. under the Ac in accordance with their 1/3rd share in the acquired land in terms of the aforesaid award dated 05.11.2007, passed by the learned Additional District Judge, Shimla, H.P., in Land Reference No. 9-S/4 of 2005. Annexure P-2.

The petition stands disposed of in the above terms.”

11. In another judgment of the Hon'ble Coordinate Bench of this Court in Civil Revision No.194 of 2018, titled Lesru Ram (deceased) through LR's Kalu Devi and others versus Collector Land Acquisition NHPC and another, decided on 24.09.2018, similar view was taken, in which judgment the Hon'ble Coordinate Bench has been pleased to hold as under:-

“9. The question, whether a co-owner can seek enhancement of compensation qua the acquisition of land in Execution proceedings, without having filed Reference Petition under Section 18 of the Act, stands duly answered by this Court in Dinesh Kumar & Ors. v. State of Himachal Pradesh & Anr. AIR 2012 HP 68, wherein it has been specifically held that co-owner cannot be denied the enhanced amount of compensation on the basis of award under Section 28A of the Act, even if he/she had not filed claim petition before the court. It would be profitable to extract para Nos. 5 to 9 of the aforesaid judgment here-inbelow.

“5. The prayer for enhanced compensation and interest etc. has been declined by the learned Reference Court mainly on the ground that as the petitioners did not come forward for redetermination of the amount of compensation on the basis of the award of the court dated 05.11.2007, Annexure P-2, under Section 28-A of the Act, they were precluded from laying claim for enhanced compensation and interest etc. under Section 146 CPC.

6. I have heard the learned counsel for the petitioners and the learned Deputy Advocate General with the learned Assistant Advocate General for the respondents and gone through the records.

7. I have no hesitation to say at the very outset that the learned Reference Court has not addressed the issue involved in the matter in the right perspective even despite the fact that the law laid down by the Hon'ble Supreme Court in *A. Viswanatha Pillai & others v. The Special Tahsildar for Land Acquisition No. IV and others* .(1991) 4 Supreme Court Cases 17:(AIR 1991 SC 1966) and *Jalandhar Improvement Trust vs. State of Punjab and others*. AIR 2003 Supreme Court 620, was brought to its notice on behalf of the petitioners who relief upon the same in support of their claim.

8. In the case of *A. Viswanatha Pillai & others*, *supra*, the Hon'ble Supreme Court has held as under vide the relevant portion of para 2 of the report:

“2..... The same ratio would apply to the facts in this case as well. 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 necessary implication that he was acting on his behalf and on behalf of his other co-owners or coparceners and was seeking a reference on behalf of other co-owners as well. What was acquired was their totality 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. The courts below committed manifest error in refusing to pass an award and payment thereof to the appellants merely on the ground that there was no mention in this regard in the reference application or two of them sought reference in respect of two awards and the last one made no

attempt in their behalf. The claimants are entitled to payment of the enhanced award by the civil court pro rata of their $\frac{1}{4}$ share each with 15 per cent solatium and 4 per cent interest as awarded by the civil court. The appeals are accordingly allowed with costs of this Court."

9. Thus, it is more than clear that even a co-sharer who has not sought reference to the court is entitled for enhanced compensation pro-rata in accordance with his share in the acquired land."

10. Reliance is also placed on Judgment passed by the Hon'ble Apex Court in V. Viswanatha Pillai and others v. Special Tahsildar for Land Acquisition No. IV and others AIR 1991 SC 1966, wherein it has been held as under:-

"2. The sole question for decision is whether in a reference Sought for by one of the co-owners whether the other co- owners who did not expressly seek reference, are entitled to enhanced compensation pro-rata as per their shares. It is not in dispute that under the partition deed, the four brothers as coparceners kept in common the acquired property and Venkatachalam was in management thereof and each are entitled to $\frac{1}{4}$ share in the ancient Anicut and the irrigation system. It is also undisputed that total enhanced compensation is Rs.52,009.40 p. Therein all the four brothers including the appellant are entitled to $\frac{1}{4}$ share each. In the reference application made by the Venkatachalam indisputably he mentioned that the acquired property belonged to him and his other brothers and the compensation awarded by the Land Acquisition Officer was inadequate and very low. It was also stated that they should get an enhanced amount at the figure specified in the reference application. Undoubted he stated therein that he is entitled to $\frac{1}{4}$ share. What he stated thereby was that of his entitlement of $\frac{1}{4}$ share of the total enhanced compensation and obviously, after the reference on par with his three brothers, he is entitled to receive compensation at $\frac{1}{4}$ share. The Courts below disallowed the payment to the

appellants on the ground that there is no mention in the claim petition of the partition deed; that they are the co- owners and that there is no averment that the Venkatachalam was seeking reference under section 18 on his behalf and on behalf of his other three brothers. As regards the first two grounds are concerned they are palpably incorrect. It is seen that an express averment was made in the objections filed pursuant to notice under section 9(3) and 10 and also in his reference application under section 18 of the Act, that there was prior partition and each of the brothers are entitled to 1/4th share and that they are dissatisfied with the award of the Collector. Undoubtedly there is no express averment in the reference application under section 18 that he is seeking a reference on his behalf and on behalf of his three brothers. It is contended by the counsel for the State that the pleadings are to be strictly construed and that as the reference was sought for only by Venkatachalam of all the six awards the other three brothers are not entitled to any share in the enhanced compensation. In support thereof it is also further contended that Viswanathan and Pasupathy had only asked for reference in respect of two awards and Sabhapathy Pillai made no request for reference against any of the six awards made by the Collector. It is true that Viswanathan and Pasupathy made such request in respect of two awards and Sabhapathy did not make any request for reference against any of the awards. But what would be the consequence in law is the question. It is surprising that the State having acquired the property of a citizen would take technical objections regarding the entitlement of the claim. The State certainly is right and entitled to resist claim for enhancement and lead evidence in rebuttal to prove the prevailing price as on the date of notification and ask the court to determine the correct market value of the lands acquired compulsorily under the Act. But as regards the persons entitled to receive compensation are concerned it has no role to play. It is for the claimants inter se to lay the claim for compensation and the court would examine and

award the compensation to the rightful person. As seen in the objections pursuant to the notice under section 9(3) and 10, Venkatchalam made necessary averments that himself and his brothers had 1/4 share in the Anicut and irrigation system pursuant to the partition deed referred to therein. In his reference application under section 18 also he reiterated the same and stated that the amount awarded by the Collector was inadequate and that they were dissatisfied with it and that they are entitled to more. It is settled law that one of the co-owners can file a suit and recover the property against strangers and the decree would ensure to all the co-owners. It is equally settled law that 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 or coparcenary under Hindu Law by all the coparceners. In *Kanta Goel v. B.P. Pathak & Ors.*, [1977] 3 S.C.R. 412, this Court upheld an application by one of the co-owners for eviction of a tenant for personal occupation of the co-owners as being maintainable. The same view was reiterated in *Sri Ram Pasricha v. Jagannath & Ors.*, [1977] 1 S.C.R. 395 and *Pal Singh v. Sunder Singh (dead) by Lrs. & Ors.*, [1989] 1 S.C.R. 67. A co-owner is as much an owner of the entire property as a sole owner of the property. It is not correct to say that a co-owner's property was not its own. 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. That position will undergo a change only when partition takes place and division was effected by metes and bounds. Therefore, a co-owner of the property is an owner of the property acquired but 'entitled to receive compensation pro-rata. The State would plead no waiver nor omission by other co-owners to seek reference nor disentitle them to an award to the extent of their legal entitlement when in law they are entitled to. Since the acquired property being the ancestral coparcenary and continued to be kept in common

among the brothers and the income derived therein was being shared in proportion of their shares by all the brothers it remained as joint property. As co-owners everyone is entitled to 1/4 share therein. It was also laid by this Court in a recent judgment in Ram Kumar & Ors. v. Union of India & Ors., [1991] 1 SCR 649 that it is the duty of the Collector to send full information of the survey numbers under acquisition to the court and make reference under section 18 and failure thereof is illegal. The same ratio would apply to the facts in this case as well. When one of the co-owner 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 necessary implication that he was acting on his behalf and on behalf of his other co-owners or coparceners and was seeking a reference on behalf of other co-owners as well. What was acquired was their totality 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. The courts below committed manifest error in refusing to pass an award and payment thereof to the appellants merely on the ground that there was no mention in this regard in the reference application or two of them sought reference in respect of two awards and the last one made no attempt in their behalf. The claimants are entitled to payment of the enhanced award by the Civil Court pro-rata of their 1/4 share each with 15 per cent solatium and 4 per cent interest as awarded by the Civil Court. The appeals are accordingly allowed with costs of this Court". AIR 2003 Supreme Court Cases 620 case titled as Jalandhar Improvement Trust v State of Punjab and others."

11. It is apparent from the aforesaid exposition of law laid down by the Hon'ble Apex Court as well as

this Court that co-owners, who have/had not sought reference under Section 18 of the Act, are also entitled to enhanced compensation on pro-rata basis as per their shares. In the instant case, it is not in dispute that co-owners of Award Holders had filed petition under Section 18 of the Land Acquisition Act and in those proceedings amount of compensation awarded by the Land Acquisition Collector was enhanced and as such Award Holders being co-owners qua the land acquired by the respondent No.1.

12. Though this court has already held herein-above that the co-owners, who have/had not sought reference under Section 18 of the Act, are also entitled to enhanced compensation on pro-rata basis as per their shares, but careful perusal of the material available on record, especially impugned order passed by learned Court below, clearly reveals that the learned Additional District Judge, Kullu, while passing impugned order, has miserably failed to appreciate the facts of the case and has not even bothered to take into consideration the law laid down by this court in Dinesh Kumar (supra), wherein it has been categorically held that co-owners cannot be denied enhanced compensation on the ground that they did not come forward for redetermination of the amount of compensation on the basis of Award of the court under Section 28-A of the Act ibid. Leaving it aside, this court finds that the learned Presiding Officer had been passing contradictory orders on the issue at hand, because in the identical case having been decided by him i.e. Execution Petition No. 13 of 017, titled Pune Ram (deceased) vs. LAC and others, he held that the claim for enhanced compensation of the acquired land jointly owned by parties, cannot be denied on the ground that co-owner had not filed an independent reference under Section 18 of the Act.

13. Consequently, in view of the detailed discussion made herein above as well as law laid down by the

Hon'ble Apex Court, the order dated 16.5.2018, passed by learned Additional District Judge, Kullu, Himachal Pradesh in Execution Petition No. 57/2017 titled Lesru Ram since deceased through Legal Heirs (a) kalu Devi etc. vs. Collector Land Acquisition etc., deserves to be set aside being against the aforesaid exposition of law.

14. Accordingly, the present petition is allowed. Order dated 16.5.2018, passed by learned Additional District Judge, Kullu, Himachal Pradesh in Execution Petition No. 57/2017 is set aside and quashed. Executing Court is directed to proceed further in accordance with law. Pending applications, if any, are disposed of."

12. Therefore, in light of the above discussions as well the as law discussed hereinabove, as this Court does not find any infirmity in the order passed by the learned Executing Court, because, what the learned Executing Court has done is that it has given the present respondents the benefit of the enhanced compensation as was given to the other co-owner, the present petition being devoid of any merit is dismissed. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

November 24, 2025
(Vinod)