

in his absence, it logically follows that an appeal, which in the processual law of our country is re-hearing of the original matter, cannot be filed by him on merits. So far as the impugned order declining to entertain the appeal of petitioner No. 2 is concerned, we do not find any fault with it. Challenge directly by petitioner No. 2 to this Court about the legality of the revocation order does not impress us because it is after a regular enquiry that the order of suspension was revoked and not at an interim stage. If the complainant has no right of hearing in an appeal on merits, how can he have such a right in these proceedings under Article 226 of the Constitution. The petitioner as it appears to us is more keen to preserve his acting Sarpanchship on being a complainant in the case.

(7.) For the aforesaid reasons, we dismiss the petition *in limine*.

R.N.R.

Before : J. V. Gupta and K. P. Bhandari, JJ.

RAM DAYAL (DECEASED) AND OTHERS,—Appellants.

versus

STATE OF HARYANA,—Respondent.

R. F. A. No. 389 of 1976.

17th November, 1989

Code of Civil Procedure (V of 1908)—Ss. 149, 151 and 153. O. 6, Rl. 17, O. 41, Rls. 3 and 22—Claim for enhanced compensation—Application for amendment of memorandum of appeal filed 10 years after decision in Regular First Appeal—Application not maintainable.

Held. that the application has been filed after more than 10 years of the decision of the appeal by this Court. The said matter has become final between the parties and, therefore, could not be reopened after more than ten years by permitting the appellants to amend the memorandum of appeal to claim enhanced amount of compensation now. Once the appeal is disposed of, that jurisdiction is lost and that, therefore, it was not possible for the claimants to ask for amendment of the grounds so as to increase the claim for disposal of appeal.

(Para 2)

Ram Dayal (deceased) and others v. State of Haryana (J. V. Gupta, J).

Held, that we are of the considered opinion that the Supreme Court judgment in *Nand Ram v. The State of Haryana*, 1988 PLJ 505 has not overruled the judgment of the Full Bench of this Court in *Banta Singh v. Union of India*, I.L.R. (1988)2 P&H 377.

(Para 3)

Held, the application is not maintainable and that too after ten years and is, thus, liable to be dismissed *in limine*.

(Para 7)

Application under Order 6, Rule 17 read with Order 41, Rules 3 and 22 and Section 149, 151 and 153 of the Code of Civil Procedure praying that this application may kindly be accepted, the appellant-petitioners be permitted to amend the memorandum of appeal to claim Rs. 2,50,000 as the enhanced amount of compensation instead of Rs. 1,00,000 and the appellant-petitioners be also allowed to pay the additional amount of court-fee amounting to Rs. 1464-00 and the judgment of this Hon'ble Court dated 27th April, 1979 may kindly be re-called and modified so as to allow the appellant-petitioners to get the actual amount of compensation payable to the appellants petitioners at the rate of Rs. 10 per square yard with solatium and interest at the statutory rates on the amount of Rs. 2,50,000.

M. S. Jain, Sr. Advocate with Sarita Gupta, Advocate, for the Petitioner.

Nemo, for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) Regular First Appeal No. 389 of 1976, arising out of the land acquisition proceedings, was decided by this Court on April 27, 1979. Now, C.M. No. 1762-CI of 1989 has been filed by the appellants for permission to amend the memorandum of appeal to claim Rs. 2,50,000 as enhanced amount of compensation instead of Rs. 1,00,000. They have also prayed to allow them to pay the additional amount of Court fee and accordingly, the judgment dated April 27, 1979 be recalled and modified to allow the appellants to get the actual amount of compensation payable to them.

(2) Admittedly, the application has been filed after more than 10 years of the decision of the appeal by this Court. The said matter has become final between the parties and, therefore, could not be reopened after more than ten years by permitting the appellants to amend the memorandum of appeal to claim enhanced

amount of compensation now. The learned counsel for the appellants referred to the Supreme Court judgment in *Nand Ram v. The State of Haryana* (1), to contend that such a relief could be granted by this Court. He also cited the judgment of the learned Single Judge in C.M. No. 1740-CI of 1985 (2), in which relying upon the said Supreme Court judgment, the application was allowed. Earlier, the Full Bench of this Court in *Banta Singh v. Union of India* (3), held that the appellate Court may permit the appellant to amend the relief asked for in Court below as also in appeal when appeal is pending. Once the appeal is disposed of that jurisdiction is lost and that, therefore, it was not possible for the claimants to ask for amendment of the grounds so as to increase the claim for disposal of appeal. According to the learned counsel, in view of the subsequent Supreme Court judgment in *Nand Ram's* case (supra), the judgment of the Full Bench of this Court in *Banta Singh's* case (supra), is no longer a good law.

(3) After hearing the learned counsel, we are of the considered opinion that it could not be successfully argued that the above-said Supreme Court judgment has in any way overruled the aforementioned Full Bench judgment of this Court.

(4) The Supreme Court in *Nand Ram's* case (supra) while granting special leave, allowed the appeal and granted certain relief therein whereas this Court is not sitting in appeal at this stage and, therefore, the question of granting any relief as claimed, does not arise. Moreover, in the Full Bench judgment of this Court, this aspect was considered and it was observed that,—

“As we have already pointed out, if we have been sitting in appeal over the decision of the Division Bench, we could follow the Supreme Court judgment above referred and granted the relief prayed for by permitting the amendment of the grounds and modifying the decree of the Bench and awarding enhanced compensation subject to payment of Court fee. Neither an appeal lies against the Bench judgment before us, nor as already stated, a review application is possible under Order 47 of the Code of Civil Procedure. This cannot also be treated a

(1) 1988 P.L.J. 505.

(2) R.F.A. No. 843 of 81 decided on 4th April, 1989.

(3) I.L.R. (1988)2 P&H 377.

Kanwaljit Singh v. Union of India (M. S. Liberhan, J.)

clerical or arithmetical mistake because the learned Judges definitely stated that their reliefs shall be with reference to the claims in the appeals and it could not be more than what they have asked for in the appeal. If the applicants were aggrieved by that direction, they should have preferred an appeal as has been done in the decision reported in AIR 1985 S.C. 1576 (1985 PLJ 496). Therefore, we are unable to agree that we can invoke the principles enunciated in the judgment of the Supreme Court and grant the relief in this case."

(5) As regards the Single Bench judgment, the benefit was being claimed under the amending Act and it has nothing to do with the facts of the present case where amendment is sought of the memorandum of appeal after 10 years. Moreover, before the learned Single Judge, the State never opposed the application, as it was observed that, "the application is not being opposed seriously." In any case, it was wrong to say that the abovesaid judgment of the Supreme Court overruled the Full Bench judgment as observed by the learned Single Judge.

(6) Reference may also be made to the Division Bench judgment of this Court in C.M. No. 2001-CI of 1987 in R.F.A. No. 2671 of 1981, decided on September 19, 1988, wherein similar matter was considered and reliance was placed on the Full Bench judgment of this Court in *Banta Singh's* case (*supra*).

(7) Viewed from any angle, the application is not maintainable and that too after ten years and is, thus, liable to be dismissed in limine.

R.N.R.

FULL BENCH

Before : J. V. Gupta, C.J., M. S. Liberhan & R. S. Mongia, JJ.

KANWALJIT SINGH,—Petitioner.

versus

UNION OF INDIA,—Respondent.

Civil Writ Petition No. 2886 of 1989.

10th September, 1990

Constitution of India, 1950—Art. 356—State of emergency in Punjab—Imposition of President's rule—64th amendment—Amendment is intra-vires the Constitution—Amendment not violative of basic structure and democracy.