

Before Hon'ble A. L. Bahri, J.

JUGAL KISHORE AND OTHERS,—*Petitioners.*

*versus*

THE IMPROVEMENT TRUST, BATHINDA AND  
OTHERS,—*Respondents.*

Regular First Appeal No. 1921 of 1990

10th August, 1990

*Constitution of India—1950—Arts. 226/227—Punjab Town Improvement Trust Act—Maintainability of Regular First Appeal against order of Tribunal.*

Held, that Section 59 of the Town Improvement Act makes the award of the Tribunal as final, there being no other provision for appeal being made in the Statute. By analogy the right of appeal cannot be conferred. Appeal has always been a statutory right. I hold that the appeal is not maintainable and reject the appeal.

(Para 5)

H. S. Kathuria, Advocate, for the Appellant.

#### ORDER

(1) Improvement Trust, Bathinda acquired some land. There was some dispute between the land-owners which was referred to the Tribunal constituted under the Punjab Town Improvement Trust Act for decision (District Judge, Bathinda). As is apparent from the order passed by the Tribunal such a reference was made under section 30 of the Land Acquisition Act. The Tribunal disposed of the matter,—*vide* order dated October 3, 1989. Some of the land-owners Jugal Kishore and others preferred Regular First Appeal against the said judgment. Registry took up an objection that the Regular First Appeal was not maintainable against the order of the Tribunal. However, counsel for the appellants insisted that appeal was maintainable. That is how the matter has been put up before the Court.

(2) Section 59 of the Punjab Town Improvement Trust Act reads as under :—

“Section 59 :

For the purpose of acquiring land under the Land Acquisition Act, 1894 for the trust :—

- (a) the tribunal shall (except for the purposes of section 54 of the said Act) be deemed to be the Court, and the president of the tribunal shall be deemed to be the Judge, under the said Act ;

- (b) the said Act shall be subject to the further modification indicated in the Schedule to this Act ;
- (c) the president of the tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means and (so far as may be) in the same manner as is provided in the case of Civil Court under the Code of Civil Procedure, 1908; and
- (d) the award of a tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894, and shall be final.”

(3) Sub-clause (d) of Section 59 of the Act aforesaid makes it clear that the award of the tribunal shall be deemed to be an award of the Court under the Land Acquisition Act and shall be final. There is no other provision of the Punjab Town Improvement Trust Act providing appeal or revision against the award of the Tribunal to the High Court.

(4) It is not disputed that under the Land Acquisition Act, if award had been made by the District Judge (Court) an appeal could be filed in the High Court. Such an award could be made either on reference made either under section 18 or under section 30 of the Land Acquisition Act. Shri S. S. Kathuria, Advocate, has argued that any order made on reference under section 30 of the Land Acquisition Act determining title of different land-owners of the land acquired would amount to a decree and as such would be appealable. In support of his contention, he has referred to :—

1. *Mt. Bhagwafi v. Mt. Ram Kali* (1).
2. *Bai Lalita v. Shardaben and others* (2).
3. *Velappa Gounder v. Nachimuthu Gounder and others* (3).
4. *Loomchand Sait v. The Revenue Divisional Officer and others* (4).
5. *Custodian, Evacuee Property v. Amar Nath and others* (5).

(5) After going through the aforesaid judgments, it has been noticed that all these cases were under the Land Acquisition Act

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- (1) 1933 P.C. 133.
  - (2) A.I.R. 1970 Gujarat 37.
  - (3) A.I.R. 1973 Madras 449.
  - (4) A.I.R. 1975 Madras 177.
  - (5) A.I.R. 1981 J&K 88.

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and not under any other special Statute like the Punjab Town Improvement Trust Act. Section 59 of the Town Improvement Act as reproduced above makes the award of the Tribunal as final, there being no other provision for appeal being made in the Statute. By analogy the right of appeal cannot be conferred. Appeal has always been a statutory right. I hold that the appeal is not maintainable and reject the appeal.

(6) On the request of counsel for the appellants, it is ordered that the court-fee paid be refunded.

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J.S.T.

Before Hon'ble N. K. Sodhi, J.

DHARAM SINGH AND OTHERS,—Petitioners.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 2447 of 1991

31st October, 1991.

*Constitution of India 1950—Articles 226/227—Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to State of Haryana)—Proviso to Section 7—13A—Ejectment proceedings—Petitioner raised question of title in ejectment proceedings before the Assistant Collector—Title not decided and ejectment ordered.—vide impugned orders—Held that it is incumbent upon Assistant Collector to convert himself into a Tribunal under Section 13-A and decide question of title first—Impugned orders set aside.*

*Held, that the proviso to Section 7 of the Act is very clear. In the summary proceedings sought to be initiated under Section 7 of the Act for the ejectment of a person allegedly in unauthorised occupation, it is open to the latter to raise a question of title and if he proves the same prima facie, the Assistant Collector 1st Grade has no choice but to first decide that question of title by converting himself into a Tribunal under Section 13-A of the Act.*

(Para 4)

Anil Khetarpal Advocate, for the Petitioner.

H. S. Sangha Senior Advocate with Amarjit Singh, Advocate for respondent No. 3.

C. L. Sharma, Advocate for the State of Haryana.