
(2011) 09 P&H CK 0164

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1653 of 1999 (O and M)

Baba Daya Ram Trust Society (Regd.)

APPELLANT

Vs

Jai Chand and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 30, 4, 6

Citation : (2012) 1 RCR(Civil) 199

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Judgement

Rakesh Kumar Garg, J.—This order shall dispose of the Regular First Appeal Nos. 1653, 3008, 3022 to 3034, 3067, 3068, 3302, 3303 and 3385 of 1999 and cross-objections therein, as common question of law and facts are involved.

2. RFA No. 1653 of 1999 and cross-objections in RFA Nos. 3023, 3026, 3027, 3028, 3029, 3030, 3031, 3032, 3033, 3034 and 3302 of 1999 have been filed by the landlord Baba Dayal Ram Trust Society challenging the apportionment made by the learned Reference Court in favour of the tenants in the ratio of 60% 40%.

3. RFA Nos. 3008, 3022 to 3034, 3067, 3068, 3302, 3303 and 3385 of 1999 have been filed by the appellants for enhancement of compensation of their acquired land on the ground that the Reference Court has not awarded the appropriate compensation.

4. Briefly the facts of the case are that Government of Haryana vide notification u/s 4 of Land Acquisition Act 1894, (in short "the Act") dated 28.2.1995 required the land of village "Raison" for public purpose, namely, construction of Pharal Minor RD. No. 0 to 40000 off taking from RD 103657/R of Sirsa Branch, which was followed by declaration dated 22.12.1995 u/s 6 of the Act", and vide award No. 13K dated 5.2.1997, Land Acquisition Collector awarded Rs. 1,75,000/- per acre for all kinds of land.

5. Dissatisfied with the award on the ground of inadequacy of compensation

reference petitions u/s 18 of the Act were preferred by the interested persons, seeking reference thereof to the District Judge, Karnal. Accordingly, petitions were referred and the court below after taking evidence of the parties dismissed the reference petitions mainly on the ground that the sale instances were not duly proved and the same were executed after the date of publication of notification u/s 4 of the Act.

6. It may also be relevant to notice that in LAC No. 22 of 1997 titled as Jai Chand v. State of Haryana and another (RFA No. 1653 of 1999), the Land Acquisition Collector had granted compensation to the respondents, herein this appeal, to the extent of 1/3rd share out of the total compensation amount assessed. However, the Reference Court determined the proportion of compensation to be shared by the landlords and tenants in the ratio of 60% to the tenants and 40 % in favour of landlords in LAC No. 22 of 1997. It is also noticed that in all other reference applications/land acquisition cases, out of which the instant appeals have arisen, there was no dispute regarding apportionment, neither any such grievance was raised by the Baba Daya Ram Trust Society nor any such issue was framed by the Reference Court. In fact in all other references before the Reference Court, the question of quantum of compensation was raised only.

7. It has been argued by Sh. Anil Kshetarpal, learned counsel for the appellant-landlord and cross-objectors that in the instant case even if the respondent-tenants are entitled to compensation being tenants in the land in question at the time of acquisition yet they cannot be held entitled to 60% of the compensation as awarded by the Reference Court and reliance of the Reference Court on the judgment of the Hon'ble Supreme Court in Union of India v. Ajit Singh 1997(3) R.C.R.(Civil) 190 : 1997 (2) PLJ 114 could not be applied to the facts of this case. Inasmuch as in Ajit Singh's case (supra), there was tenancy of 30 years, renewable upto 99 years whereas in the present case, it was tenancy at will on payment of 1/3rd Batai only. Sh Kshetarpal has also relied upon a judgment of this Court in Rani Hemlata and another v. Dalip Singh and others 2006 (3) RCR (Civil) 435 to contend that an ordinary tenant not having acquired the rights as occupancy tenant, is entitled to 1/4th of the compensation only whereas learned counsel appearing on behalf of the respondent-tenants has relied upon a judgment of the Hon'ble Supreme Court in Man-gat Ram v. State of Haryana 1996(2) RRR 625 wherein the tenants were held entitled to 3/4th share in compensation and Inder Parshad Vs. Union of India (UOI) and Others, and Brij Behari Sahai (D) through LRs etc. v. State of Uttar Pradesh 2004(1) R.C.R.(Civil) 158 : 2004(2) LJR 650 in support of his case.

8. It may also be noticed at this stage that learned counsel appearing on behalf of the appellants has also claimed enhancement in compensation on the basis of a judgment of this Court in 1802 of 1999 (Shyam Bihari v. Land Acquisition Collector and another) decided on 20.5.2011 wherein land was acquired by the State of Haryana vide notification dated 28.2.1995 issued u/s 4 of the Land Acquisition Act (within the revenue estate of villages Kaul and Chandlana, Tehsil

and District Kaithal for construction of Pharal minor and the market value of the compensation was assessed by the Reference Court at Rs. 1,85,000/- per acre. It was further upheld by this Court in RFA No. 795 of 1994 decided on 14.10.1999. It is contended that claimants in the instant case also entitled to the same compensation as land in both the cases was acquired vide notification issued u/s 4 of the Land Acquisition Act on the same date and for the same purpose and the only difference was that in both the cases land belongs to different villages but (there was no difference in the quality and kind of land acquired in both the village% and in fact the lands were contiguous to each other in these villages as it is clear itself from the purpose of the acquisition i.e. Construction of Pharal Minor.

9. Counsel for the respondent-State has contested the claim of the land owners for enhancement of compensation on the ground that in fact in RFA No. 795 of 1999, no compensation was enhanced by this Court and the award of the Reference Court was maintained and since the Reference Court has determined the compensation keeping in view the facts of that case, the same cannot be applied in the instant cases.

10. I have heard learned counsel for the parties.

11. So far as the question of determination of market value of the land in question is concerned, it is not in dispute that land for acquisition in the instant cases and in RFA No. 795 of 1999 was acquired vide notification dated 28.2.1995 issued u/s 4 of the Land Acquisition Act for construction of Pharal Minor. It is further not in dispute that kind of land acquired in both sets of cases is the same and land is contiguous to each other. Even otherwise, learned State counsel could not point out any reason for determining the compensation in both the cases at a different rate except as argued above.

12. It may also be noticed that the Land Acquisition Collector vide his award dated 25.2.1997 had determined compensation at the rate of Rs. 1,35,000/- per acre for village Kaul whereas the same was enhanced to Rs. 1,85,000/- per acre by the Reference Court and the said award was upheld by this Court in RFA No. 795 of 1999 whereas in the instant appeals the Land Acquisition Collector had assessed the market value of the land in question at Rs. 1,75,000/- per acre and the Reference Objections were dismissed by the Reference Court. Not only this, from the sale deeds placed on record as Ex.PW48 to PW50, one thing is clearly established that there was a rising trend in the prices of the acquired land as shown in these sale deeds. Thus, this Court finds no reason not to award the same rate of compensation to the appellant-claimants in the instant case as granted to the land owners of village Kaul as decided by this Court in RFA No. 795 of 1999. Hence, the compensation of market value of the land in question is determined at Rs. 1,85,000/-per acre and the award of the Reference Court is suitably modified.

13. Qua the issue of apportionment of compensation between the appellants i.e.

Landlords and the respondent-tenants, it is an admitted fact that the respondents are recorded as tenants at will on payment of 1/3rd Batai in the revenue record over the acquired land.: Learned counsel appearing on behalf of the appellant-landlord has not seriously disputed the question of entitlement of compensation to the respondent-tenants and has disputed only as to the extent of quantum of compensation payable to them. In fact in view of the judgments of the Hon"ble Supreme Court in Inder Parshad's case (supra) and Brij Behari Sahai's case (supra), the respondent-tenants in the acquired land are entitled to claim compensation for acquisition of land taken from their possession.

14. As noticed above, counsel for the respondent-tenants have claimed that they were entitled to compensation to the extent of 3/41" share whereas contention of the counsel for the appellant-landlord is that the respondents" share can not be more than 1/4"" of the total compensation. It is useful to refer to the some of the relevant parts of the judgments relied upon by both the parties which can throw some light on the guiding factors for determining the ratio in apportionment of the compensation between the parties. In Ajit Singh's case (supra), a lease was granted in the year 1949 and it was terminated in 1960. The acquisition was initiated in 1967 on which date, the tenant continued to be in possession of the property and it was also noticed that the lease deed was for 99 years and a part of said lease was enjoyed for the period of 18 years. The Supreme Court thought it appropriate to apportion the compensation in ratio of 60 % to tenant and 40 % to the land lord as reasonable. In Inder Parshad's case (supra), the acquisition of land in respect of lease was granted for 99 years to the tenant and apportionment was done in ratio of 75 % and 25 % in favour of tenant and landlord respectively. In the case of Mangat Ram's (supra) which relates to acquisition of commercial premises, the apportionment of compensation was made at 75 % and 25 % to the tenant and land lord respectively. In Col. Sir Harinder Singh Brar Bans Bahadur Vs. Bihari Lal and Others, since the tenant was entitled to the entire land under the provisions of Tenant Act, it was held by the Hon"ble Supreme Court that tenant was entitled to the total compensation. However summing up the principals for determination of the apportionment between the parties, it was observed as under :

The Court is required to take into consideration relevant factors, viz., the duration of the lease; the nature of the right to enjoyment of the lease-hold interest and the improvements the tenant made on the land etc. It is equally settled law that if the Government is the owner of the land, before initiating the acquisition, it is entitled to terminate the lease and take possession of the lands in terms of the lease. Necessarily, in the above case tenant cannot have any right to compensation as he is bound by the terms of the lease. In a case where the Government in spite of the covenant contained in the sale deed, chooses to acquire the land, necessarily the tenancy right of the tenant is required to be assessed and the compensation has to be awarded suitably. In view of the fact that the lease is for 99 years and the part of the lease has been enjoyed for the period of 18 years, we think that the apportionment of the compensation in the

ratio of 60% to the tenant and 40% to the landlord would be reasonable ratio and payment should accordingly be made.

15. In the instant case there is no evidence on record to suggest that the tenants have made any improvement in the acquired land.- In fact there is no lease agreement between The parties and the tenants are continuing at will. No duration of the lease deed is fixed and the nature of the right to enjoyment of the lease-hold interest in the suit property by the respondent is at their will, meaning thereby of temporary nature, whereas in all the judgments as referred to above, the tenants were either having perpetual lease deed in their favour upto 99 years or were entitled to the entire land under the tenancy laws and thus, keeping in view such kind of permanent nature of the lease deed, it was held that landlords were entitled to only to the extent of 25 % compensation, however herein, in the instant case, it has been found by the Court that there is no improvement in the land in question by the respondents. They do not have any permanent interest in the lease hold rights, duration of the lease is not fixed and they were enjoying the lease hold rights only at their will. Thus, this case cannot be considered at par with the cases referred to above.

16. Thus, the findings of the Reference Court in RFA No. 1653 of 1999 on issue No. 2 cannot be sustained and the same are set aside and it is held that the respondent-tenants are entitled to compensation to the event of 1/3rd share of the compensation as assessed by the Land Acquisition Collector.

17. At this stage, it is also necessary to mention that cross-objectors have not filed any reference u/s 30 before the Reference Court" therefore, the cross-objections filed by them are not maintainable. No such issue was framed in any of the reference application out of which these appeals have arisen and in which the cross-objections have been filed except RFA No. 1653 of 1999 wherein specific issue was raised regarding apportionment.

18. Thus, for the reasons afore-stated, all the cross-objections filed on behalf of the respondent in RFA Nos. 3023, 3026, 3027, 3028, 3029, 3030, 3031, 3032, 3033, 3034 and 3302 of 1999 are not maintainable and are dismissed as such. The appeals filed by the interested persons/claimants/landlords for enhancement of compensation are partly allowed and the compensation of the acquired land is hereby assessed as Rs. 1,85,000/- per acre for all kinds of land. The appellants are also held entitled to the statutory benefits provided under the Act. RFA No. 1653 of 1999 is allowed in favour of the appellant and against respondent No. 1-Jai Chand holding that respondent No. 1 is entitled to compensation to the extent of 1/3rd share only and not in the ratio of 60% :40% as granted by the Reference Court.

19. A photocopy of this order be placed on the files of other connected matters.