

(2017) 04 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : 193 of 2010

Bachna Ram (since deceased) through his legal
representatives and others

APPELLANT

Vs

Land Acquisition Collector and others

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

Land Acquisition Act, 1894, Section 30,
Section 18 - Dispute as to apportionment - Reference to Court

Citation : (2017) 04 SHI CK 0036

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : G.D. Verma, B.C. Verma, S.C. Sharma, Vijay Sharma, Ramakant
Sharma, Basant Thakur, Sashi Kiran, R.P. Singh

Judgement

1. The landowners/appellants herein are aggrieved by the verdict recorded by the learned District Judge, Solan, H.P. in Land Reference Petition No.2-S/4 of 2007, whereby, he dismissed their petition preferred under Section 18/30 of the Land Acquisition Act, on ground of his not possessing jurisdiction, to decide the question of conferment of proprietary rights upon respondents No.3 to 7 by the Revenue Officer concerned, exercising powers under the Himachal Pradesh Tenancy and Land Reforms Act. Also, the learned Reference Court, remanded the petition aforesaid, to the Land Acquisition Collector, with a direction that after the Civil Court concerned, decides the fact of conferment of proprietary rights upon the respondents concerned, in respect to the land(s) brought to acquisition, thereafter, his making a reference under Section 30 of the Land Acquisition Act, with respect to the apportionment of compensation inter se the landlords vis-a-vis the tenant(s).

2. The reason, which prevailed upon the learned Reference Court, to make the aforesaid pronouncement, ensued, from its depending upon the pronouncement of this Court reported in 1991(1) Sim. L. C., 223 titled as Chuniya Devi versus Jindu Ram, wherein, this Court has barred Civil Courts, to test the legality of

decision(s) recorded by a Revenue Officer/ Land Reforms Officer(s) concerned, exercising powers under the H.P. Tenancy and Land Reforms Act, whereby, he proceeds to make an order, conferring proprietary rights upon a "gair maurusi". The reason aforesaid, as projected by the learned Reference Court, to omit to answer the Reference Petition, palpably arises from a gross misappreciation of the import of the aforesaid decision, in decision whereof, though, a Civil Court is barred to contest the legality of an adjudication made by the Land Reforms Officer concerned, exercising powers under the H.P. Tenancy and Land Reforms Act, whereby, he confers proprietary rights upon a "gair maurusi", yet in the instant case, no order has been made by the Land Reforms Officer concerned, whereby, he has conferred proprietary rights upon respondents No.3 to 7, with respect to the land(s) brought to acquisition, contrarily, compensation amount has been assessed upon respondents No.3 to 7, on the ground of theirs holding the status of tenants under the landowners, with respect to the land(s) brought to acquisition, factum whereof, of the aforesaid status, of the respondents concerned, is contested by the landowners. The aforesaid contest was reared by the landowners, by theirs making an application before the Land Acquisition Collector, application whereof stands constituted under the provisions of Sections 18/30, of the Land Acquisition Act. The aforesaid application, preferred by the landlords, before the Land Acquisition Collector, was transmitted by the latter, to the learned Reference Court. The respondents/tenants, furnished a reply to the petition, received by the learned Reference Court, from the Land Acquisition Collector. On the contentious pleadings of the parties, the learned Reference Court proceeded to strike the following issues:-

1. Whether the respondents No.3 to 7 are not entitled to any share in the compensation amount as payable to the petitioners? OPA

2. Whether the respondents No.3 to 7 have become owners of the suit land under H.P. Tenancy and Land Reforms Act, as such, entitled to whole of the compensation amount? OPR3 to 7.

3. Whether the respondents No.3 to 7 are not the tenant of respondents No.2, as such, not entitled to any compensation as payable to respondent No.2? OPR-2

4. Relief.

3. Also evidence thereon stood adduced before it. However, as aforesaid, the learned Reference Court, did not either appraise the evidence in respect thereto adduced before it nor answered either of the aforesaid issues. The reason which prevailed upon it, for not answering the aforesaid issues, stood anchored upon the aforesaid decision of this Court rendered in Chuniya Devi's case supra. Consequently, this Court is enjoined to test whether the applicability of the decision recorded by this Court in Chuniya Devi's case supra, by the learned Reference Court, with respect to the facts at hand, being appropriate or not. In making, the aforesaid answer, an allusion to the ratio decidendi propounded, in the aforesaid judgment of this Court, is imperative. The ratio decidendi held in

Chuniya Devi's case supra is extracted hereinafter:-

"64. We have attempted to do it in the present case and have come to the conclusion that the Legislature has envisaged a complete Code in the provisios of the H.P. Tenancy and Land Reforms Act, 1972, inter alia for effectuating its purpose of land reforms and has ruled out determination of any question connected therewith by the Civil Court.

The Answer

Our answer, therefore, is:

(a) That an order made by the competent authority under the H.P. Land Revenue Act, 1954, is open to challenge before a civil court to the extent that it relates to matters falling within the ambit of section 37(3) and section 46 of that Act; and

(b) the civil court has no jurisdiction to go into any question connected with the conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reforms Act, 1972, except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with."

4. A reading of the afore-extracted ratio decidendi, propounded by this Court, in Chuniya Devi's case supra, makes it abundantly clear qua its warranting attraction, only when an order(s) is pronounced by the Revenue Officer concerned, exercising powers under the H.P. Land Revenue Act, 1954 or when an order is pronounced by the Land Reforms Officer concerned, exercising powers under the H.P. Tenancy and Land Reforms Act, 1972, whereby, he confers proprietary rights upon, a gair maurusi tenant. However, in the instant case, there is no order recorded either by the competent authority exercising powers under the H.P. Land Revenue Act, 1954 or by the Land Reforms Officer concerned, exercising powers under the H.P. Tenancy and Land Reforms Act, 1972, whereby, proprietary rights with respect to the land(s) brought to acquisition, stand conferred upon respondents No.3 to 7. Consequently, the ratio decidendi, propounded by this Court in Chuniya Devi's case supra, was not applicable with respect to the facts of the instant case. Conspicuously, also with the parties adducing their respective evidence, on the aforesaid issues, it was incumbent upon the learned Reference Court, to appraise the probative worth of the relevant evidence, besides it was incumbent upon it, to also accordingly answer the apposite issues, whereupon, the parties were at contest. However, the learned Reference Court, has abandoned to perform its statutory duty, especially when, it was, under Section 30 of the Land Acquisition Act, exercising the jurisdiction of a Civil Court, hence, was bound to make a pronouncement upon the aforesaid reference petition, preferred before it, by the landowners. Consequently, the abandonment of jurisdiction, by the learned Reference Court, warrants its standing discountenanced. In aftermath, the appeal is allowed and the impugned verdict, of the learned Reference Court, pronounced in Land

Reference Petition No. 2-S/4 of 2007, is quashed and set aside. The learned District Judge, is directed to decide afresh the aforesaid reference petition within four months from today. The parties are directed to appear before the learned Reference Court on 26th May, 2017. All pending applications also stand disposed of.