
(1988) 04 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 5017 of 1982 Treated as C.R. No. 1976 of 1983

Beer Singh (Bir Singh)

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 22-04-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1988) 04 P&H CK 0022

Hon'ble Judges : S.D. Bajaj, J

Bench : Single Bench

Advocate : J.R. Mittal with Mr. Pawan Bonsal, for the Appellant; V.K. Bali for Respondent No. 5 and Mr. Ram Lal Gupta for Respondent Nos. 6 and 7, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Bajaj, J.—Beer Singh son of Hira Singh owned 57 Kanals 2 Marias of agricultural land comprised in Khasra Nos. 23/4, 5, 6/1, 30/10, 11/1, 23/6/2, 7, 14 to 16 situated in village Bhuchio Khurd tehsil and district Bhatinda. Beer Singh is alleged to have migrated to Malaysia more than 63 years back. Alleging that Beer Singh had not been heard of for more than 7 years by the next of the kin in respondent Nos. 5 to 7, the respondents got a mutation of his landed estate aforesaid attested in their favour on 5th March, 1963. There was litigation in revenue courts and ultimately on 21st July, 1981 entries in revenue papers regarding title of Beer Singh over this land were restored.

2. Before this date, however, the landed estate of Beer Singh was acquired for the establishment of cantonment at Bhatinda. On the basis of mutation dated 5th March, 1963, in their favour respondent Nos. 5 to 7 claimed compensation of the acquired land from the Land Acquisition Collector. Since there was a dispute between respondent No 5 and respondent Nos. 6 and 7 as to who amongst them is heir and legal representative of Beer Singh, the Land Acquisition Collector respondent No. 3 referred the matter to District Court respondent No. 4 for

determination on 28th January, 1982. Controversy inter-se between respondents No. 6 and 7 on one side and respondent No. 3 on the other was resolved through civil court judgment and decree dated 25th March, 1982 in civil suit No. 434 filed on 21st August, 1981 holding respondent Nos. 6 and 7 to be owners of this land.

3. Beer Singh through his attorney Motha Singh approached the District Court vide Civil Misc No. 11 dated 9th February, 1982 for being impleaded as party in the Section 30 reference. The request was declined on 11th October, 1982. Present Civil Revision is directed against that order. It would not be out of place to mention here that the District Court being conscious of its own limited jurisdiction under the Land Acquisition Act directed the applicant petitioner to approach the civil court.

4. I have heard Shri J.R. Mittal, Advocate, learned counsel for the petitioner, Shri V.K. Bali, Advocate, for respondent No. 5, Shri R.L. Gupta, Advocate, for respondents Nos. 6 and 7 and have carefully scrutinised the record.

5. Referring to the observations made in *Bagh Singh and others v. The Special Land Acquisition Collector, District Courts Jalandhar* (1984) 86 P.L.R. 568, learned counsel for the petitioner urged that the District Court could invoke its jurisdiction under Order 1 Rule 10 of the CPC and add Beer Singh owner of the acquired lands as party to the proceedings before it. It has also been urged that the finding in *Bagh Singh's* case (*supra*) is based on authoritative pronouncements in *Boregowda* and another v. *Subharamiah* AIR 1959 Mys 265, *Bhadar Munda and Another Vs. Dhuchua Oraon*, , *M/s Swatantra Land & Finance Private Ltd. v. The State of Haryana* AIR 1975 P&H. 52, and *Sher Singh v. Union of India* (1983) 85 P.L.R. 86 (F.B.). I have carefully gone through the authorities cited and reached the conclusion that ratio of these authorities would have helped the petitioner if the reference before the District Court would have been as to the person to whom compensation money was payable. In the present case the reference was only in regard to the apportionment of compensation between respondents 5 to 7. Petitioner who was not a part to the proceedings before the Collector for making the award could obviously not be added as a party to the proceedings before the District Court for apportionment of compensation amount between respondents 5 to 7.

6. The legal position was discussed thread bare in *Mt. Sakalbaso Kuer Vs. Brijendra Singh and Others*, , wherein a Division Bench of that Court observed, "Section 30 of the Act states:-"When the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court." For a reference under this section, no particular procedure has been prescribed in the Act like that mentioned in section 20 in regard to a reference u/s 18. Section 53 of the Act lays down:-"Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the CPC shall apply to all proceedings before the Court under this Act." Since no other procedure has been prescribed

for a reference u/s 30, aid has to be taken of the provisions of the CPC in that respect. There is nothing in the Act which is inconsistent with the application of the provisions of Order 1, Rule 10, Code of Civil Procedure, in regard to a reference u/s 30 of the Act. In that view of the matter, the Court had power to add a person as a party if it appears to the court to be just to do so; and, particularly if the Court finds that the presence of such a person may be necessary in order to enable it effectually and completely to adjudicate upon and settle all questions involved in the case. The Court below should have considered this aspect and decide whether the present petitioner has made out a sufficient cause for being added as a party to the proceedings before it. On the facts of the case, there cannot be any doubt that she is a person interested in the land acquired and compensation determined. The learned Additional District Judge has mentioned in his order that if the present petitioner is added as a party that will give rise to a complicated question of title and the question for consideration shall be entirely a new one and cannot be said to be covered by the reference made by the Collector. Section 30 provides two things, one is about a dispute arising as to the apportionment of the amount of compensation and the other is about the dispute as to the persons to whom the same is payable. If, in a case, the award is made jointly in favour of more than one person and the parties do not agree as to the share in which the compensation will be taken by them (see section 29) and if there be a dispute in regard to in what share they should be paid, there can be a reference in that respect to the Court u/s 30 by the Collector. That will be a dispute as to the apportionment of the compensation money. The other kind of dispute envisaged under that section is where an award is made in favour of one person but some other person or persons come before the Collector and ask for payment of that compensation, on the ground that they are entitled to receive that compensation either completely to the exclusion of the awardee or with the awardee. That will be a dispute as to the persons to whom the compensation money is payable and can also be the subject of reference u/s 30. If the dispute is of the former kind viz., as to the apportionment of the compensation persons who have not come before the Collector during the proceedings for making the award, may not be permitted to come before the Court, because the dispute referred for decision of the Court in that case is confined to in what share the compensation money will be paid to the awardees. But if the reference is in regard to the second category of disputes, as to the persons to whom the compensation money is payable, there, the scope of decision for the court will be who are the persons who are entitled to receive the compensation. In the present case, the Collector found when the claim for payment of compensation was made by the persons other than the awardee that there was a dispute of that nature and he referred the same to the Court for decision. The present petitioner, prima facie is a person interested in the compensation fixed for the land under acquisition, within the meaning of the definition under the Act and the question being as to persons to whom the compensation is payable she will be one of such persons, prima-facie, to be considered in regard to her claim by the Court in the reference case. The mere

fact that she was not before the Collector in the proceedings for making the award u/s 11 or thereafter, will not stand in her way in taking advantage of the provisions of Order 1, Rule 10, Code of Civil Procedure. We are aware of a decision in the case of Indumati Debi Vs. Tulsi Thahurani and Others, , in which it was held that the jurisdiction of the Court in a reference made by the Collector u/s 30 is confined to a consideration of the dispute expressly referred to it by the Collector. An addition of parties may indeed be made when the persons who desire to be added as parties do not raise any new dispute but want to place other materials before the Court in connection with the dispute that is referred to it by the Collector. But it cannot be permitted where the question sought to be raised is entirely a new one and is not covered by the reference made by the Collector. The facts of that case revealed that an award was made in favour of three persons. There was a dispute between those three persons as regards their right to the compensation money and, therefore, there was a reference by the Collector u/s 30 of the Act. The petitioner, who came before the High Court in revision, claimed that a moiety share of the premises acquired which belonged to her mother had devolved upon her to the exclusion of the awardees and, therefore, she was entitled to half of the compensation money. That was clearly a reference about apportionment of the compensation money between persons in whose favour a joint award had been made by the Collector and there was a dispute as to in what share they would be entitled to take the compensation money. In that case, therefore, the introduction of a new claimant was not allowed by the Court Those facts are clearly distinguishable from the facts of the present case inasmuch as here the award was made in favour of one person and the Collector has made the reference not about apportionment between the awardees but as to persons to whom the compensation money is payable. Secondly, when the attention of their Lordships of the Calcutta High Court in that case was drawn to a decision of the Allahabad High Court in Kishan Chand v. Jagannath Prasad (1902) ILR 35 All. 133, in which it had been laid down that the provisions of section 32 of the CPC (as it then was) corresponding to the present Order 1, Rule 10, of the present Code, was applicable to a proceeding under the Land Acquisition Act before the District Judge (Court) in accordance with the provisions of S. 53 of that Act, their Lordships preferred to follow the bench decision of the Calcutta High Court in two previous cases in which no reference to the applicability of the provisions of the CPC was taken into account. They, however, did not say that the view taken in the Allahabad decision was susceptible to any fault or demur. I think in view of the clear provisions of S. 53 of the Act, the provision under Order 1 Rule 10, Code of Civil Procedure, are clearly attracted to a case of reference u/s 30 before the Court when the nature of the dispute under reference does not change. The Calcutta decision, for the reasons given above, is distinguishable and cannot give the guide line for decision of the present application before us. In respectful agreement with the view propounded therein it is held that the prayer of Beer Singh for being added as party to the proceedings in regard to apportionment of compensation between respondents 5 to 7 was justifiably declined by the District Court on 11th October,

1982.

7. Learned counsel for the petitioner then contended that the need for apportionment of compensation would arise only when the real owner himself was not available to claim and obtain compensation. According to the learned counsel, in the present case Beer Singh being still alive, is the only person entitled to obtain compensation for his acquired lands. Proceedings for apportionment of compensation pending in the District Court are therefore, a mere exercise in futility. While advancing this argument, learned counsel for the petitioner presumably lost sight of the fact that both the Collector and the civil Court basing their decisions on the presumption envisaged in section 114 of the Evidence Act regarded Beer Singh as dead. Beer Singh through his attorney Motha Singh has been able to successful knock the doors of the revenue court but has not as yet moved his little finger against the decree of the civil court in Zora Singh and another v. Jai Kaur, civil suit No. 434 decided on 25th March, 1982. It was for this reason that the District Court exercising its limited jurisdiction under the Land Acquisition Act while deciding Civil Misc. No. 11 of 1982 on 11th October, 1982, directed the petitioner to approach the civil court for redressal of his grievances. The argument advanced by the learned counsel for the petitioner, therefore, does not take the case set up by the petitioner any further.

8. Crux of the matter is that Beer Singh migrated from India to Malaysia while he was still a young child and is apparently not interested in his landed, estate acquired by the State. Collaterals in respondents 6 and 7, sister in respondent No. 5 and attorney in Motha Singh are inter-se involved in a struggle to grab the amount of compensation payable to Beer Singh and best forum for staking their respective claims envisaged in law is the civil court of competent jurisdiction who shall be able to pronounce a legally enforceable verdict in this behalf. Assailed order dated 11th October, 1982 is thus wholly justified and legally sustainable on this score as well. In result the revision Petition fails and is dismissed. Keeping in view the peculiar facts and circumstances of the case there shall be no order as to costs.