

(2011) 11 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1900 of 1980 (O and M) in Regular First Appeal No. 292 of 1981 (O and M) and Regular First Appeal No. 465 of 1984 (O and M)

Ch. Vidya Bhushan (died) through his LRs and others APPELLANT

Vs

Haryana State and others
 Ranbir Singh (deceased) RESPONDENT
through his LRs Vs State of Haryana and others
 Ch.
Ranbir Singh (deceased) through his LRs and others Vs
Haryana State and another

Date of Decision : 15-11-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1A), 28, 4(1)

Citation : (2012) 3 RCR(Civil) 306

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : M.L. Sarin, with Mr. Nitin Sarin, for the Appellant; O.P. Sharma, Additional Advocate General Haryana and Ms. Vandana Malhotra, for the Respondent

Judgement

K. Kannan, J.—All the three appeals are connected. RFA No. 1900 of 1980 and RFA No. 292 of 1981 arise out of acquisition proceedings dated 23.07.1975, while RFA No. 465 of 1984 arises out of acquisition dated 24.09.1981. RFA No. 1900 of 1980 deals with the issue of jurisdiction of the Reference Court to enter upon an adjudication regarding the apportionment on the basis of rival claims to title and for enhancement, while RFA Nos. 292 of 1981 and 465 of 1984 deal with the issue of adequacy of compensation. RFA No. 1900 of 1980 arises against the order of the Additional District Judge, Karnal, whereby the Additional District Judge held that there was no need for interfering with the compensation awarded by the Land Acquisition Collector while also holding at the same time that the petitioners 2 to 4, namely, Vidya Bhushan, Bimla Chaudhry, Nidhi Mehta, had no right, title or interest in the land and that the property belonged only to the first petitioner Ranbir Singh along with respondents 2 to 4, who were Ravi Raj Chaudhry, Shanti Devi and Rama Mehra. The appeal is filed by the petitioners 2

to 4, who were found to be not the owners of the property. The subject matter of acquisition was property in khasra No. 3932/2 of the extent of 4 bighas 1 biswas out of 4 bighas 7 biswas. The property had been originally owned by Parma Nand by virtue of purchase through a document dated 17.04.1968. There had been a division in relation to the property for the subject of arbitration and an arbitral award had been passed on 28.03.1972 granting the whole property in khasra No. 3932/2 to Ranbir Singh, who was the 5th respondent. Subsequently, however, there had been two suits filed in Civil Suit No. 290 of 1973 under Ex. P8 and 290 of 1973 against Ranbir Singh by Lachhman Dass and Vidya Bhushan. By virtue of these two suits, the respective plaintiffs in the above two suits were granted 2/3rd shares and the remaining 1/3rd share was given to Ranbir Singh.

2. The adjudication regarding ownership was sought to be undertaken before the Reference Court on the objection taken by the mother Shanti Devi (3rd respondent), brother Ravi Raj Chaudhry (2nd respondent) and sister Rama Mehra (4th respondent). The Reference Court held that Ranbir Singh's father Parma Nand had paid the consideration exclusively and his brothers Lachhman Dass and Vidya Bhushan had made no contribution to the same. When the property was allotted exclusively to Parma Nand by the authorities under the Displaced Persons (Compensation & Rehabilitation) Act of 1954, it was challenged by his brothers Lachhman Dass and Vidya Bhushan, but their contentions were rejected. The petitioners 2 to 4, however, relied on the subsequent Civil Court decree that delimited the share of Ranbir Singh son of Parma Nand only to 1/3rd and the remaining 2/3rd was claimed as belonging to Lachhman Dass and Vidya Bhushan. The Court held that after the adjudication before the authorities under the Displaced Persons (Compensation & Rehabilitation) Act of 1954, there could be no estoppel against Ranbir Singh from contending that the Civil Court decrees would be final and operative. I find this to be a strange finding by the Reference Court for two reasons: one, after a Civil Court decree determines rights of parties, no party can resile from the same unless the decree itself is set aside. The adjudication of Civil Court proceedings could not have been reopened by a Reference Court; and two, the Reference Court itself lacked jurisdiction to adjudicate on issue of title. The reference was made only u/s 18 and the Court had no jurisdiction to allow parties to join issues on title. The Reference Court had no power to decide on whoever was entitled to compensation. In a reference u/s 18, the only relevant subject could be the quantum of compensation. In *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Limited v. Allahabad Vikas Pradhikaran and another*, 2003(2) R.C.R. (Civil) 674 : (2003)5 SC Cases 561, the Hon"ble Supreme Court held that the Reference Court will have no jurisdiction to decide a matter not referred to it. The contention raised by the counsel appearing on behalf of respondents 2 to 4 is to the effect that the power of the Reference Court u/s 18 would include also a power to decide an entitlement of compensation. The learned counsel would rely on the decision of the Hon"ble Supreme Court in *Sharda Devi Vs. State of Bihar and Another*, ; decisions of this Court in *Piara Lal v. Col. His Highness Raja Sir*

Harinder Singh Brar Bans Bahadur Ruler of the Former Faridkot State, Faridkot and another, 1979 PLR 468; Behari Lal v. Col. His Highness Raja Sir Harinder Singh Brar Bans Bahadur, Rular of The Former Faridkot State etc, 1979 Cur LJ 526; and in yet another of Andhra Pradesh High Court in Shayam Rao v. Land Acquisition Officer (Spl.) cum-Dy. Collector Singoor Project of Sanga Reddy and others, 1991 AIR (AP) 219. In all these decisions, it could be noticed that the reference was not merely u/s 18 but it was also a reference u/s 30. It would also be a different situation where in a case where there is a dispute regarding an apportionment, if the Collector does not make a reference u/s 30, the Collector could be compelled to make a reference through a direction of a Court. That is the situation that arose in certain other citations which the learned counsel for the respondents 2 to 4 relied on. I cannot accede to the general contention that Section 18 could be converted as 30 reference. Such a contention is directly against the decisions of the Hon"ble Supreme Court referred to above.

3. I shall still examine whether there has been any gross injustice to the respondents 3 and 4 by a failure to make reference u/s 30. I find the respondents 2, 3 and 4 cannot simply make a claim for an apportionment in the manner sought for. It is sought to be contended before me that in the arbitration proceedings for the division of all properties related only to 1/3rd of the property in khasra No. 3932/2 and 3934. On the other hand, there is a specific reference by the Arbitrator in his award that the whole of the property belonging to the family, was the subject of adjudication. Respondents 2 and 4 have actually signed in the award where the property has been exclusively allotted to Ranbir Singh. In the perception of the parties at that time, it appears that the property was not even considered valuable, having regard to the fact that the Government had encroached in the property and put up a hospital. The 1/3rd reference to the hospital is not with reference to the 1/3rd share in the property. On the other hand, 1/3rd reference is to the hospital portion which was situate in the whole of the family property. The relevant portion is as under :-

...Also there are two interests of the deceased in immovable properties. One is in a parcel of land in the possession of one Labh Singh deceased and others measuring 1/3rd or 8 Bighas and 15 Biswas at Panipat and the other is 1/3rd in a pot of land which is in the forcible possession of the hospital authorities at Panipat even before the death of the deceased. There is very little liklihood of anything valuable coming out of these but by consent of all, I award these to Shri Ranbir Singh Chaudhry who shall deal with this to the best of his ability, and reap the benefits if any. No other heir shall either have any responsibility nor any right in respect of these. The khasra Nos. of these properties are as under :- Labh Singh and others Khasra Nos. 3497M, 3498M, 3500M, 3544M, 3545M, 3546M, 3547M, 3548M etc. Taraf Rajpu-tan, Panipat Area 8-15 Bighas.

Hospital 3932/4-7, 3934-6 = 4-13 Taraf Ansar, Panipat

(underlining mine)

There is, therefore, no merit in the contention that they have any share in this property. Respondents 2 to 4 have been allotted substantial immovable properties and shares and it is even observed that if there are any more properties coming to light in future, it shall be distributed equally amongst Shanti Devi, Ranbir Singh, Rama Mehra and Ravi Raj Chaudhry. The Arbitrator has taken care to see that the respondents 2 to 4 are not denied any share in the property.

4. If the property had been exclusively allotted to Ranbir Singh and later in a decree, he willingly suffered a 2/3rd share for the appellants, it is inconceivable as to how the brother and sister could make a claim in respect of such a property. It is again not understandable as to how the respondents 2 to 4 could have expected to be impleaded as parties when the suit was rightly instituted only against Ranbir Singh, who had been allotted the properties by the arbitral process. The non-impleadment of the respondents was of no consequence. I, therefore, discard the finding recorded by the Reference Court regarding title and set aside the judgment in so far as it finds that the appellants are not entitled to the property.

5. RFA Nos. 292 of 1981 and 465 of 1984 concern adjudication regarding the quantum of compensation and they relate to different awards. RFA No. 292 of 1981 alone concerns the subject of property covered in RFA No. 1900 of 1980 discussed above. The learned senior counsel for the appellant contends that the acquired property is situate on the GT road and the property had been already in the possession of the Government under an alleged trespass where a hospital had been built up. There had been a civil suit which declared the plaintiff's right to the property that necessitated the acquisitions subsequently by the Government for retention of the property for the use of hospital.

6. The property abuts GT road and it is also an admitted fact that Raj Guru Market is proximate to the acquired land. General bus stand is also situate nearby. A commercial area of the Panipat town is towards the right side of the acquired land. On the left side is the office of the PWD (B & R) and in front is the PWD rest house. Arya High School is also in the vicinity and the location of the property as a busy commercial area is not disputed. It is argued by the senior counsel for the petitioner that the property did not require any development since the entire extent of property itself was already developed and a hospital had been constructed. The evidence produced before the Reference Court were the sale deeds in the vicinity of the property that showed a price range variation from Rs. 1025/- per square yard to Rs. 2260/- per square yard. Ex. P1 to P4 related to the plots purchased in public auction in the year 1975, whereas properties in Ex. P5 to P7 related to the plots purchased in the year 1981. These sales were in relation to the property that had been offered as plots by the public authority for establishing shops.

7. The property secured by a public authority in public auction in competitive bids is perhaps the best method of ascertaining a market value but strangely the Reference Court had reasoned that plots sold at auction could not serve any

criteria for determining the market value. The Court found that the prices are invariably fixed after the development undertaken by the public authorities and that component cannot avail in this case. This reasoning also, I would find, is not sound, for, the contention had been that the property did not require any development at all and a hospital had been put up by the Government at the very location without any further development. The petitioners had also relied on Ex. P8, P8-A, P9 and P10 as illustrating the value of the property in the vicinity. The property in P8-A and P9 were held to relate to the property which was 400 yards away from the acquired property and P9 property itself was sold by at prices in three slabs, the first slab abutting on the GT road at Rs. 250/- per square yard and the 2nd and 3rd slabs were at Rs. 150 and Rs. 100/-. The rejection of these documents are also inappropriate for the entire property acquired abuts the main road and the whole of the property has been used for a single purpose. Belting system" (dividing land into different belts for determination of market value) will not apply, the Supreme Court has ruled in Trishala Jain and Another Vs. State of Uttaranchal and Another, Recent Apex Judgments (R.A.J.) 170 : (2011)6 SCC 47 where the (i) the lands were similarly placed and were surrounded by developed areas and (ii) that all acquired lands were intended to be used for the same purpose. Both these conditions are satisfied and therefore, I would apply the same value for the whole property, where the extent itself is not very large and situate in the proximity of developed markets and on the GT Road. The property in P10 had been a subject of sale for vacant plot valued at Rs. 1,150/-. This property was said to be in the commercial area and the Reference Court rejected this document on the ground that the property where the acquired land was situate was just outside the commercial area. The sales in Ex. P11 and P12 were discarded since the sales were in respect of built-up shops and the money obtained for built-up shops cannot held in determination of the market value.

8. First of all, I cannot accept the reasoning that the acquired property was not in a commercial area. It was bang on the main road and all commercial activities and prominent office buildings were situate in the immediate vicinity of the acquired property. The sale deeds relied on related to the periods between 1975 to 1977. No doubt the sale deeds related to sales of the lands and buildings. There were small shops of area of 34 square yards, 20-3/4 square yards, 20 square yards, 45 square yards and 90 square yards respectively. The values were shown in the range of Rs. 1,050/- being the lowest to Rs. 2,000/- being the highest, for small parcels of land referred to above. The extent of property is too small to make a favourable comparison for the larger extent of property as acquired by the Government. The learned senior counsel for the appellant would, therefore, contend that if the location of the property shown in the data sales could be fairly reflective of the market value, appropriate deduction could be made taking note of the relative larger extent of the acquired property.

9. The learned counsel relies on a Division Bench judgment of this Court in Surinder Kumar v. State of Haryana, 2006(2) R.C.R. (Civil) 133 : 2006(2) PLR

559, that held that while determining market value, a Reference Court shall not rely on the assessment made by the Collector himself as the basis for the market value. That is exactly the situation here where the Reference Court has relied on the valuation of the Collector himself as the guiding factor for determining the market value. I, therefore, would hold that the basis of valuation adopted by the Reference Court itself is erroneous. The Hon''ble Supreme Court gave a guideline about how periodical increases of valuation could be made to keep pace with the inflationary trends in *Om Parkash v. Union of India and another*, 2004(3) R.C.R. (Civil) 726 : 2004(3) PLR 727. The Court had held that the market price of the land could be escalated at 10% every year progressively from 1963 to 1973 and thereafter at 12% every year progressively upto the date of acquisition. The learned counsel would contend that in this case since the acquisition related to a period of 1980, an escalation could be made to 12% on the valuation as found from the earlier years. Since the sales which have been referred to by the plaintiffs relate to small extents in the range of 20 to 30 square yards where the range has been between Rs. 1,000/- to Rs. 3,000/- per square yard and since they would include the built up portion also, it would be difficult to take the valuation proportionately for the larger plot which is about 4700 square yards. In *Trishala Jain's case (supra)*, the Supreme Court held in the manner of valuation, court could make some deduction in the range of 10 to 86.33%. If the mean valuation for a small plot was Rs. 1500 per square yard, I would provide that the said valuation could be reduced to 75% of the valuation, regard being also had to the fact that what was sold in auction included also the building, and that would make for Rs. 375 per square yard. The property had already been in the possession of the government and since the notification u/s 4(1) was passed soon after the arbitral award, which records the parties'' perception that the property was not very valuable, the assessment would not require an addition of 12% every year from the date of notification till the award. It may seem looking back in 2011 that the property is worth several crores now, but we need to recreate the situation of what existed in 1975 and assess the valuation. The method of providing for solatium and interest themselves are only to provide for the contingency of loss of property and delayed payments. The assessment of Rs. 375 is still better than the valuation of the property in the instances relied on by the petitioners, vide Ex A8a and A9, that had been sold for Rs. 250/- in the first slab. This I will hold to be the appropriate market valuation of the property acquired. The compensation determined will therefore to be enhanced at the above rate for the entire parcel of lands. I will not make any distinction between the property situate in khasra Nos. 3932 and 3934 since they form part of the same parcel and the whole of the property had been utilized for the same purpose.

10. This brings us to consider the property that is the subject matter in RFA No. 465 of 1984, in relation to compensation assessed for the property in khasra No. 3923/1, 6 biswas and 3934, 6 biswas comprising of a total extent of 12 biswas. A notification u/s 4(1) of the Land Acquisition Act had been made on 24.09.1981

and in terms of the award, the Collector had determined the value of the property as 80 per square yard for 6 biswas for the property in khasra No. 3932 and Rs. 65 per square yard for 6 biswas falling in khasra No. 3934. Having discarded all the documents relied on by the petitioners, the Reference Court in RFA No. 292 of 1981 took into account only one instance viz. Ex. P18 which was the award of the Collector himself and the award related to the property in khasra No. 3932/2 that had been acquired after a notification u/s 4(1) on 23.07.1975. The Collector had in that fixed the market value at Rs. 50/- per square yard. Making a marginal increase over the same, the Reference Court took the value at Rs. 80/- per square yard for khasra No. 3932 and Rs. 65/- per square yard for khasra No. 3934.

11. The approach of the Reference Court in discarding all the sale deeds in relation to the property and deciding to go with determination of compensation made in another acquisition 4 years earlier appears to be totally unjustified. Since I have determined the value of the property at Rs. 375/- per square yard for the property in RFA No. 292 of 1981 which was acquired on 23.07.1975, I shall make an increase in value of the property for the acquisition that came about subsequently on 24.09.1981 at Rs. 400/- per square yard for the property in RFA No. 465 of 1984. The parameters and the instances taken for determination are the same.

12. Since the award of the District Judge had been passed on 09.11.1983, that is, the period subsequent to the introduction of the Land Acquisition Bill in the Parliament on 30.04.1982 in terms of Section 23(1A), the claimants are entitled to solatium @ 30% on the respective amounts due for the two properties covered under the two awards. On the aggregate of the respective amounts, the additional amount shall also draw interest at 12% p.a. from the date of Section 4(1) notification till the collector's awards. As regards the additional amount so determined, the petitioners would be entitled to interest as provided u/s 28 of the Land Acquisition Act, from the date of S.4(1) notification, since the possession had been taken even prior to the notification, till the date of payment. The appeals in RFA No. 1900 of 1980 and RFA No. 292 of 1981 are allowed enhancing the compensation to Rs. 375/- per square yard while RFA No. 465 of 1984 is allowed raising the compensation to Rs. 400/- per square yard. The appellants are also entitled to costs, as duly certified, against the contesting State only in RFA No. 292 of 1981 and RFA No. 465 of 1984. RFA No. 1900 of 1980 is allowed with costs in two sets against the State and the private respondents.

13. The learned counsel for the appellants seeks for direction for deposit in the manner laid down by the Hon'ble Supreme Court in Valliyammal v. Tahsildar, 2011(3) R.C.R. (Civil) 903 : 2011(4) Recent Apex Judgments (R.A.J.) 361 : 2011(8) SC Cases 91. There shall be a direction as mentioned in para 27, which is reproduced as under :-

27. With a view to ensure that the landowners are not fleeced by the middlemen,

we deem it proper to issue the following further directions :-

(i) Within one month from the date of receipt of copy of this judgment, the Land Acquisition Officer shall depute an officer subordinate to him not below the rank of Naib Tahsildar or an equivalent rank, who shall get in touch with the landowners and/or their legal representatives and inform them about their entitlement to receive enhanced compensation.

(ii) The officers concerned shall instruct the landowners and/or their legal representatives to open savings bank account in a nationalised or scheduled bank, in case they already do not have such account.

(iii) The account numbers of the landowners and/or their legal representatives should be furnished by the officer concerned to the Land Acquisition Officer within a period of two months.

(iv) Within next one month, the Land Acquisition Officer shall deposit the amount of compensation along with other statutory benefits in the bank accounts of the landowners and/or their legal representatives by way of cheques.