

(1996) 08 AHC CK 0013
In the Allahabad High Court
Case No : Civil Revision No. 485 of 1995

Hari Ram Nagalia and Others

APPELLANT

Vs

Addl. District Judge/Special Judge and Others

RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 18, 3, 30

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (1996) 08 AHC CK 0013

Hon'ble Judges : R.K. Mahajan, J

Bench : Single Bench

Advocate : Ravi Kiran Jain and Sanjay Kaushik, for the Appellant; Budhwar and S.Cs., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Mahajan, J.—This revision is directed against the order dated 19th October, 1995 passed by the Additional District Judge/Special Judge, Dehradun in L.A. Case No. 454 of 1990 Virendra Kumar v. Collector in reference sent by opposite party No. 2 u/s 31(2) of the Land Acquisition Act praying that the revision may be allowed and the award in Case No. 25 of 1987-88 pertaining to plot Nos. 496, 497 and 499 area 8.83 acres, situate in village Raipur, Pargana Parwadoon, Tahsil and District Dehradun be set aside.

2. The short and legal question in this revision, which arises, is that if the person interested has not filed objections u/s 9 of the Land Acquisition Act (hereinafter be called the Act) and the reference is made by the Collector u/s 30/31(2) or the Act to the decision of the Collector regarding the apportionment and disbursement of the compensation of money, can he apply to the Court, La, the District Judge, u/s 18 of the Act for impleading as a party as he is a person interested within the meaning of Section 3(b) of the Act?

3. The brief facts leading to this controversy are detailed hereinafter:

Notification was made with respect to the aforesaid land u/s 4 of the Land Acquisition Act on 18.3.1988. Declaration u/s 6 of the Act was made on 30.4.1988 and the possession was taken on 30.12.1988. The award was pronounced by the Collector on 28.4.1990. It is also admitted fact that nobody moved application u/s 18 of the Act for making reference and the Collector on 6th November, 1990 had made reference u/s 31(2) read with Section 30 of the Act to the Court after depositing the amount.

4. Sri Ravi Kiran Jain, learned Counsel for the revisionists has submitted that certain persons were recorded as Bhumidhars but they were not in possession in revenue record and some other persons were recorded in possession but their names were not figured in the revenue record as "Bhumidhar". The revisionists moved an application on behalf of tenure-holder Hari Ram Nagalia and others before the reference court, i.e., District Judge alleging that they were co-tenure owners with other tenure-holders and they be impleaded as party for disbursement and apportionment of compensation and the application of Hari Ram, etc. was rejected by the Additional District Judge. Sri Jain, learned Counsel for the revisionists has submitted that nobody has made the reference and there is no bar of being impleaded as a party before the District Judge for adjudication of the matter in dispute and according to him, the revisionists are interested persons and even if they have not filed objections u/s 9 of Land Acquisition Act, they are at liberty to join later on. He has described the order of the court below as illegal and has not appreciated the correct approach of law.

5. Sri S. C. Budhwar, learned Counsel for the Respondents has argued that the revisionists are not interested persons as they have not filed objections u/s 9 read with Section 11 of the Act, they are debarred to be impleaded as a party and the order of the court below is correct. He further submitted that the revisionists have lost the litigation before the civil court as well as before the revenue court and they have suppressed this fact.

6. Both the learned Counsel have relied authorities in support of their respective contentions. The reference would be made later on.

7. I would like to advert the arguments of Sri Jain, learned Counsel for the revisionists and would like to refer the definition of person interested as defined in Section 3(b) of the Act:

The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

Reference would be made to Section 4 of the Act under which the notification is Issued showing the intention to acquire the land and publicity is given. Section 9 of the Act contemplates again the procedure to safeguard the persons effected and notice is sent by the Collector showing the intention to take possession and interested persons have to file compensation claim. The enquiry is held by the

Collector regarding the objections including the respective interest of the person claiming compensation and the award is made after applying the principle of natural justice and then the award is passed.

Section 12 of the Act lays down as follows:

12. Award of Collector when to be final:--(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

The intention of the Legislature in Section 12 appears to be apportionment of the compensation after hearing the objections of the persons interested and there can be no other intention than this. Then follows Section 18 of the Act for reference before the Court, i.e., District Judge. It provides that the person interested, who has not accepted the award, may make an application to the Collector that he is not satisfied regarding the amount of compensation or apportionment or measurement.

8. Reference would be made to Section 30 of the Act which is being quoted as under:

30. Dispute as to apportionment--When the amount of compensation has been settled u/s 11, if any dispute arises as to the persons to whom 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.

The word "the persons to whom the same or any part thereof is payable" has to be read with the language of Section 11 of the Act and in Section 11, only the persons interested should have filed objections and not any third party figures. Section 30 figures after Section 4 of the Act for the apportionment of compensation. Section 31 figures under Part V "Payment". The language of Section 31 is quoted with the advantage as under:

31. Payment of compensation or deposit of same in Court.--(1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the

amount of the compensation in the Court to which a reference u/s 18 would be submitted.

* * * * *

9. The emphasis has been laid down "the person entitled to receive the award according to the award" and a person who has filed objections u/s 9 of the Act and by no stretch of imagination, a third party can intervene.

10. Section 53 of the Act provides the applicability of the provisions of Code of Civil Procedure. Section 53 is reproduced below:

53. CPC to apply to proceedings before Court.--Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the (Code of Civil Procedure, 1908), shall apply to all proceedings before the Court under this Act.

If any provision is contrary to the provisions of the Land Acquisition Act, the Court cannot interpret the same in other way. It is procedural section and cannot override substantive provision of person interested. Since third party has not made any claim u/s 9, etc. of the Act, such provision is not applicable.

11. Sri Jain, learned Counsel for the revisionists had relied on the decision of Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR"s., . I have gone through the judgment. This ruling is not applicable as the question in this case was involved whether the company for which the land was acquired has locus standi to file appeal and is a person interested? The ratio laid down in this case is not applicable and is distinguishable. The next decision relied by the learned Counsel for the revisionists is of Karanpura Development Company Vs. Union of India (UOI) and Others, . Emphasis was laid on paragraphs 7, 8 and 9 of this ruling. I have also perused those paragraphs carefully. In my view, this ruling is also not applicable on the facts of the present case. It is now settled law that the facts of the two cases are not the same and facts of each have to be analysed and only after proper analysis, the law is made applicable.

12. Now coming to the submissions made by Sri S. C. Budhwar, learned Counsel for the Respondents. Reference has been made regarding the effect of Suit No. 9 of 1968 in respect of the dispute relating to partition and the decree was passed in favour of predecessor-in-interest of the Respondents and against revisionists (see Annexure 4). No share was given to the revisionists claimants as they had no title. The copy of the judgment has been annexed as Annexure 3 to the counter-affidavit. The copy of the decree passed in the aforesaid suit has been annexed as Annexure 4 to the counter-affidavit. There is also an interesting fact which has been revealed that the claimants had also filed a suit later on u/s 229B of the U.P.Z.A. & L.R. Act. The said suit pertained to the declaration and partition of certain land including plot acquired. The copy of the suit was filed as Annexure 5 to the counter-affidavit and the suit was contested. A written statement was also filed. The suit was dismissed in default vide order dated 30.9.1981. The

restoration application was also dismissed and so the claimants do not succeed in litigation. The documents have also now been filed showing that the land is recorded in the names of the Respondents.

13. Sri S. C. Budhwar. learned Counsel for the Respondents has placed reliance upon *Tejdhari and Others Vs. Baul and Others*, ; *Niranjn Singh and Others Vs. Amar Singh and Others*, ; *Govind Narayan Lotlikar v. Smt. Savitribai Roghuvria Lotlikar and Ors.* AIR 1987 Bom 32; *Amar Singh Yadav and Anr. v. Shanti Devi and Ors.* 1987 ACC 583 (FB) and so on the ratio of these authorities is with regard to the person interested. These authorities have laid down law correctly while interpreting "person interested". It may be stated that there is always remedy open to third party to establish his claim before the competent court of jurisdiction and in this case, the revisionists have failed.

14. In view of the aforesaid discussion, I find that there is no material infirmity or illegality in the impugned order on facts as well as in law. Therefore, the revision lacks force and is liable to be dismissed.

15. The revision fails and is dismissed. The parties shall bear their own costs.