

(1986) 10 DEL CK 0031

In the Delhi High Court

Case No : Regular Second Appeal No. 74 of 1972

Hira Singh through L.R's

APPELLANT

Vs

Smt. Sahni and Others

RESPONDENT

Date of Decision : 07-10-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Delhi Land Reforms Act, 1954 — Section 11(1), 185(1), 85

Land Acquisition Act, 1894 — Section 10, 18, 18(1), 18(2), 30

Citation : AIR 1987 Delhi 168

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : Hemant Malhotra, for the Appellant; B.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Chadha, J.—This regular second appeal under S. 100 of the CPC seeks the setting aside of the judgment and decree of the Courts below and for dismissal of the suit of respondent No. 1 against the appellant.

2. The dispute relates to Khasra Nos. 932, 2 bighas 11 biswas in village Madipur, Delhi, Land measuring 2632 bighas 18 biswas and situate in village Madipur was notified for acquisition under S. 4 of the Land Acquisition Act, 1894 vide notification dated November 13, 1959 along with other land. A declaration under S. 6 of the said Act was issued on June 10, 1963 with respect to the land in village Madipur including the land of Khasra No. 932. Notices under Ss. 9 and 10 were issued to all the persons interested in the land under acquisition inviting claims for compensation. They were considered by the Land Acquisition Collector and Award No. 1691 dated March 23, 1964 was announced. In the meanwhile, Shri Surat Singh filed a suit for declaration to the effect that the declaration of bhumidari rights in respect of Khasra No. 932 in favour of Fateh Singh is wrong, illegal, without jurisdiction and void. That suit was decreed by Shri K.L. Wason, Sub-Judge, Delhi on June 15, 1960 and Shri Surat Singh was held entitled to be

declared bhumidar under S. 11(1)(a) of the Delhi Land Reforms Act. Shri Hira Singh also filed a suit against Fateh Singh for a declaration and obtained a decree on January 25, 1964 in suit No. 33/64 from the Court of Shri K.D. Mohan, Sub-Judge, Delhi to the effect that he has entitled to be declared as a bhumidar with respect to Khasra No. 932. Hira Singh got mutation No. 1205 in his favour on May 7, 1964 and received the payment of Rs. 4,39,875 on account of compensation of Khasra No. 932 along with solatium at the rate of 15% from the Court of Land Acquisition Collector, Delhi some time in the month of June, 1964.

3. Shri Surat Singh brought a suit for the recovery of Rs. 5,000 with costs of the suit against Hira Singh and Fateh Singh. It is claimed that Surat Singh is the bhumidar of Khasra No. 932 and was entitled to receive compensation which was received by Hira Singh fraudulently, illegally and, therefore, he is liable to refund the same. It is also pleaded that Hira Singh had no right, title or interest in Khasra No. 932 and he was neither in possession in the relevant period of 1953-54 nor was he entitled to bhumidari rights.

4. Hira Singh along contested the suit. Two preliminary objections were taken. Firstly, the Civil Court has no jurisdiction to try the suit and the jurisdiction of the Court is barred under the provisions of the Land Acquisition Act. Secondly, the suit for the refund of compensation money is debarred under the provisions of the Land Acquisition Act and the remedy of the plaintiff, if any, is to apply for a reference to the District Judge under S. 18 of the said Act and he cannot institute a civil suit for that purpose. On merits, the plea is that he was in cultivatory possession of the land of Khasra No. 932, and was thus entitled to be declared as bhumidar.

The trial Court framed the following issues:

1. Whether this Court has no jurisdiction to decide the suit and it is barred?
2. Whether the plaintiff was the bhumidar of Khasra No. 932 in dispute?
3. Whether the plaintiff obtained a decree of bhumidar, as alleged. If so, to what effect?
4. What is the effect of the decree of bhumidari and the mutation in favour of the defendant?
5. To what amount of compensation and interest if any, is the plaintiff entitled?
6. If issue No. 2 is proved, then whether the defendant became a bhumidar under S. 85 of the Delhi Land Reforms Act?
7. Relief.

Issue No. 1 was held in favour of the plaintiff. Issues 2, 3 and 4 were dealt together. Surat Singh was held as bhumidar in the entire holding of Khasra No. 932 to the extent of 8/27th share. The decree obtained by Surat Singh was held

as not binding on Hira Singh who was not a party to the suit. In the result, it was found that Surat Singh was entitled to receive compensation as per his share. Accordingly, a decree for Rs. 1,303,35 with proportionate costs was granted in favour of Surat Singh and against Hira Singh.

5. In the first appeal by Hira Singh, only two contentions were advanced at the time of arguments. The first related to the bar of jurisdiction of the Civil Court. After considering the rival contentions, the First Appellate Court came to the conclusion that the jurisdiction of the Civil Court to entertain the suit on account of the provisions of the Delhi Land Reforms Act or on account of the special provisions governing compensation of acquired land as contained in the Land Acquisition Act is not barred. The finding of the trial Court under issue No. 1 was confirmed. On facts it was found that Fateh Singh was declared to be bhumidar on the basis of the entry in Khasra Girdawari showing him to be in possession in the year 1953-54 but neither he had himself come up in support of the claim of possession nor it is the case of either of the contesting parties to the litigation that he was in possession at the relevant time. The First Appellate Court then considered the question as to whether Surat Singh or Hira Singh was in possession of the land. On the facts of the case, as established on the record, an inference was drawn that it was Surat Singh who was in actual possession of the land in the relevant year and, therefore, the conferment of bhumidari rights on Fateh Singh were erroneous. The view taken by the trial Court was affirmed that in as much as Hira Singh had 1/27th share in the land while Surat Singh had 8/27th share, the latter is entitled to claim Rs. 1,303.35 which represents his share of the amount of compensation which has been paid to Hira Singh. The appeal was dismissed.

6. The first submission of Mr. Hemant Malhotra, the Learned Counsel for the appellant is that in view of the judgment of the Supreme Court in Hatti Vs. Sunder Singh, , the declaratory decree obtained by Surat Singh from the Civil Court against Fateh Singh who was initially declared bhumidar of the acquired land in respect of which compensation is claimed by Surat Singh, is null and void and no relief could have been granted to him on this basis particularly when it was not implemented by the revenue Assistant. In the same breath, it is contended that the appellant was declared bhumidar of the land in suit i.e. Khasra No. 932 by the Revenue Assistant, Delhi and that mutation of Bhumidari rights in respect thereof was duly sanctioned in his favour in the revenue records. The law has been settled by the Supreme Court that the Civil Court has no jurisdiction, in view of S. 185(1) of the Delhi Land Reforms Act to entertain a suit in which the plaintiff alleging that he is the proprietor of the suit premises, has asked for the declaration that he is entitled to bhumidari rights in respect of that land and in such event declaration made would be void ab initio. In that view of the matter, the declaration obtained by the appellant himself from the Civil Court is without favour of the appellant independently of the decree dated January 25, 1964 obtained by him from the Court of Shri K.D. Mohan, Sub-Judge, Delhi. The Courts below have, therefore, rightly treated both the decrees

as non-est and came to an independent finding as to the person who is entitled to received compensation for the acquired land. There being a concurrent finding of fact, the counsel for the appellant rightly did not make an attempt for reappraisal of that evidence.

7. The main question of law which has been urged by the counsel for the appellant is that the Land Acquisition Act being a special Act with a special procedure the parties must be confined to the modus operandi provided in the Act. According to the submission of the counsel, the theory of concurrent jurisdiction of the Civil Court cannot be tenable, Reference was made to the provisions contained in Ss. 18, 30 and 31 of the said Act in support of the contention that all matters relating to the title in the acquired land have to be agitated in the land Acquisition Court. Reference is made to Mohammed Hasnuddin Vs. State of Maharashtra, . That case was concerned with the ambit of a reference under S. 18 filed beyond the period of limitation. The Court functioning under the Act being a Tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector u/s 18 complies with the conditions laid down therein so as to give the Court jurisdictions to hear the reference. The Court has, therefore jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub S(2) of S. 18 of the Act and if it finds that it was so made, decline to hear reference. The case was not concerned with the question whether the jurisdiction of the Civil Court was ousted or not. Reference was also made to Mrs. Ka Kriksibon Kharkongor and Another Vs. The Deputy Commissioner and Collector, Khasi Hills and Another, . In that case, a question which arose for consideration was the meaning of the person interested who could apply for a reference u/s 30. Considering the whole scheme of the Act and the definition of the person interested, a reference u/s 30 can be made by the Collector if a dispute is raised by any person other than who have been mentioned as persons interested in the award of the Collector. The definition of person interested under S. 18 is an inclusive definition so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. There is no dispute to this proposition. In that case also, there was no question whether a person interested was debarred from the alternative remedy of a suit. Reference is also made to the Land Acquisition Officer, Guntur Vs. Patibandla Mallikamba and Others, . That case has no application as it dealt with the question whether person aggrieved by the award of the Land Acquisition Collector could make the reference application directly to a Civil Court under S. 18(1).

8. When the counsel for the appellant was confronted with the third proviso to sub-S. (2) of S. 31 of the said Act which provides "Nothing herein contained shall affect the liability of any person, who may receive the whole or any part of compensation awarded under this Act to pay the same to the person lawfully entitled thereto", he contended that the third proviso applies only when a deposit has been made under S. 31(2) to which that proviso is annexed. Reliance is

placed at the Bar on a decision of the Bombay High Court, without citing. It is not necessary for me on the facts of this case to express any opinion contra to the view taken in the Bombay case.

9. There is no dispute to the fact that Khasra No. 932 was acquired by the Government vide award No. 1691 dated March 23, 1964 announced on March 31, 1964. Khasra No. 932 was placed in Block "B" and compensation thereof was assessed at Rs. 1,500/ - per bigha. At the time of the announcement of the award, Shri Fateh Singh was the recorded owner/person interested. No application has been made for apportionment of the compensation by any person under S. 18 of the said Act. It is not the case of the appellant that Surat Singh had received any notice of apportionment of compensation. The consensus of judicial opinion is that where a claim of a person entitled to compensation is not adjudicated upon in the land acquisition proceedings, separate suit by such person to recover his share from person who had actually received compensation, is competent. Reference may be made to the decision of the Privy Council in T.B. Ramchandra Rao and Anr. v. A.N.S. Ramchandra Rao and Ors. AIR 1922 PC 90. It was held that Land Acquisition Act contemplated two separate and distinct forms of procedure, one for fixing the amount of compensation described in the award, and the other, for determining in case of dispute the relative rights of persons entitled to receive compensation money. Any dispute as to the relative rights of persons entitled to receive compensation money may be settled by litigation in the ordinary way. This is the effect of the third proviso to S. 31(2) of the Act. The claim of Surat Singh has not been determined or adjudicated upon under the provisions of the Land Acquisition Act. He is entitled to file a suit to recover his share from the person who has actually received the amount of compensation awarded under the Act therefore, find no merit in the second submission of the counsel for the appellant.

10. No other point is urged. In the result, the appeal fails and is dismissed with costs.