(1980) 12 AHC CK 0027

In the Allahabad High Court

Case No : Second Appeal No. 472 of 1977

Idrisan APPELLANT

Vs

Meharban Ali and others RESPONDENT

Date of Decision : 05-12-1980

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171

Citation : (1980) 12 AHC CK 0027

Hon'ble Judges : K.C.Agrawal, J

Final Decision : Allowed

Judgement

K. C. Agarwal, J.

This is plaintiff''s second appeal arising out of a suit for prohibitory injunction restraining the defendants 1 to 4 from realising Rs. 19,571.79 Paise being onefifth share of compensation money from the Special Land Acquisition Officer, Ghaziabad.

The plaintiff''s claim was that she was the widow of Talseem Ali, predeceased son of Allah Kazi, to whom the lands shown in Schedules A and B belonged. During his life time, the land mentioned in Schedule C, which was a part of Schedules A and B was acquired by the Improvement Trust, Ghaziabad. Allah Razi died two years prior to the filing of the suit. A dispute arose between the plaintiff on the one hand and defendants 1 to 4 on the other with regard to the amount of compensation which was awarded in respect of the land of Allah Razi. The plaintiff''s case was that being the widow of predeceased son of Allah Razi, she was entitled to have onefifth share. But since the defendants claimed that they were the exclusive owners of the compensation, the plaintiff had to bring the suit for injunction restraining the defendants from lifting the share of the plaintiff.

Defendants 1 to 4 filed one written statement. They denied that Allah Razi was the bhumidhar or Sirdar of the land acquired. Their claim was that Allah Razi had disposed of the land of his share during his life time and after his death the contesting defendants became entitled to hold the land. The defendants further asserted that the land, in fact, belonged to the Waqf Alalaulad created by Mohammad Ali and it was the land of Waqf which had been acquired by the Improvement Trust, Ghaziabad. Accordingly, they were entitled to take the entire amount. The defendants pleaded in the alternative, that under the Mohammedan Law since the plaintiff was not the heir and legal representative of Allah Razi, she was not entitled to any relief.

On the pleadings, the trial Court framed several issues. All the issues were decided in favour of the plaintiff except Issue No. 1 which was to the effect whether the plaintiff had 1/5th share in the disputed property regarding which the compensation was given by the Special Land Acquisition Officer. As Issue No. 1 had been decided against the plaintiff, the suit was dismissed. The view of the trial Court was that as under the Mohammedan Law applicable for the purposes of taking money, the plaintiff was not the heir and legal representative, she was not entitled to any decree in the suit. In the appeal taken by the plaintiff, the aforesaid finding of the trial Court was affirmed. Being aggrieved, the plaintiff filed the present second appeal.

The question that arises before me in this appeal is whether the amount of compensation for acquisition of agricultural land is to be distributed among the cosharers in accordance with the U. P. Zamindari Abolition and Land Reforms Act in accordance with the personal law of the parties. It is common case of the parties that under Section 171 of U. P. Zamindari Abolition and Land Reforms Act the plaintiff being the widow of the predeceased son was the heir of the deceased Allah Razi, and that she would have been entitled to the land had the same not been acquired by the Ghaziabad Improvement Trust. The dispute, however, is whether the compensation awarded in respect of the land was to be distributed in accordance with the Mohammadan Law. There is however, no dispute that Mohammedan Law was to be applied, the plaintiff would not be entitled to get anything out of the money paid by way of compensation.

Shri Shyam Narain, counsel for the plaintiff urged that unless possession of land is taken in pursuance of the acquisition proceedings, the right, title and interest of the person whose land is acquired is not extinguished. He continues to be the owner of the property till the same gets vested in the State. The vesting of property acquired in the State results in vanishing the right of the person whose land is acquired. For the above argument, reference may be made to some of the provisions of the Land Acquisition Act.

Under Section 4 of the Land Acquisition Act the Government publishes a proposal to acquire land. Section 6 is a final declaration of the Government concerned that the land is required for a public purpose. Subsection (3) of Section 6 provides that the declaration shall be conclusive evidence that the land is needed, for a public purpose and, after such declaration, the appropriate government may acquire the land in the manner hereinafter appearing. Section 7 provides that whenever any land shall be so declared to have been needed for a public purpose, the appropriate Government shall direct the Collector to take order for the acquisition of the land. It is upon the taking of the order that the Collector becomes authorised to take further action in the matter. It is not competent to the Collector to "commence action merely on the issue of declaration under the preceding section. After the declaration is published, the Government issues an order to the Collector under Section 7 to take order for the acquisition included in it. Section 8 lays down that the Collector shall thereupon cause in the land to be marked out. The land would then be measured and proceedings for determination of compensation would be started after notice to the person interested has been given under Section 9. It is followed thereafter by an award to be given under Section 11 of the said Act. Upon the award being given, the Collector becomes entitled to take possession of the land. It is only after the possession of the land has been taken that the vesting takes place and the land vests absolutely in the Government free from all encumbrances. From the above, it would appear that two consequences follow from taking of possession, namely, (1) vesting of land absolutely in the Government, and (2) such vesting is free from all incumbrances. Until possession is taken by the Collector, the title of the owner is not disturbed and there is no vesting of title in the Government, notwithstanding that there has been a notification under Section 6 of the Land Acquisition Act. Section 48 of the said Act confers liberty to the authority concerned to withdraw from the acquisition of any land of which possession has not been taken.

Relying upon these provisions and Section 16 in particular, counsel urged that the right, title and interest of a person to whom the property belongs, since continue till possession has been taken, the right to get compensation had to be determined in accordance, with the law of succession and inheritance applicable to the property which is the subjectmatter of acquisition, and not the personal law.

Relying on Section 189 (b) and 190 (d) of U. P. Zamindari Abolition and Land Reforms Act, Sri A. K. Sharma counsel appearing for the defendants, contended that since the interest of the deceased Allah Razi extinguished upon the acquisition of land by the State Government, there was no question of any right in the land being succeeded by the plaintiff under Section 171 of U. P. Zamindari Abolition and Land Reforms Act. He urged that Allah Razi had no interest left in the property when the process of acquisition by declaration made under Section 6 of the Land Acquisition Act was complete, hence the plaintiff''s suit was rightly dismissed.

From the discussion made above, it would appear that the title of the person to whom the property belongs and whose land is acquired, would be extinguished upon the possession being obtained by the State Government. So long as possession of the land is not taken, title does not vest in the State acquiring the land. It is clear from the provisions of the Land Acquisition Act, mentioned above, that after the declaration of the intention to acquire land, title vests in the

State only when the possession is taken either before making of the award or after makmg of the same. Without possession, mere declaration of intention to acquire never vests the property in the State, In Daya Prakash Trikanbhai v. Special Land Acquisition Officer Baroda A.I.R. 1969 Guj. 34, after having interpreted Section 16 of the Land Acquisition Act, it was held that Section 16 does not lay down any time limit within which the Collector is obliged to take possession after the declaration of the award. The Collector can take possession at his sweet will. However, if the possession is not taken, the owner of the land would be entitled to cultivate the land and to harvest the crop.

Interpreting Section 16 and 17 of the Land Acquisition Act, the Supreme Court in F. & V. Merchants Union v. Improvement Trust A.I.R. 1957 S.C. 344 held :

"In the case contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions of limitations either as to title or possession. The legislature has made it clear that the vesting of property is not for any limited purpose or limited duration. It would, thus appear that the word ''vest has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession."

A conjoined reading of Sections 16 and 17 of the Act would show that upon the happening of the events mentioned in these sections, the property shall vest absolutely in the Government free from all encumbrances. The property does not vest in the Government unless possession is obtained. It is for this reason that Section 48 provides that after possession of the property has been taken that the Government cannot withdraw from it. Withdrawal is permissible before possession is obtained. The reason obviously is that till possession is not obtained, the property continues to be of the person to whom it belongs.

Relying upon the words of Sections 189 (b), Sri A. K. Sharma contended that the right of a tenure holder or bhumidhar is extinguished when the land has been acquired and since this section does not refer to possession, the requirement of obtaining possession cannot be read in Section 189 for extinguishing the title of the bhumidhar. The submission is not correct. It may be true that Section 189 does not require possession of the land to be acquired for extinction of right of a bhumidhar but reading the Section as a whole it would appear that possession is necessary to be obtained by the acquiring body for extinguishing the title of a bhumidhar. If a notification under Section 6 has been made but the same is subsequently withdrawn, it would not be possible to say in such a casa that a bhumidhar would lose his interest in his land despite the Government or the acquiring body dropping the idea of acquiring it. It is the taking of possession by the acquiring body that the right, title and interest of a bhumidhar extinguishes.

The argument that for extinguishing the title of a bhumidhar the requirement of obtaining possession is necessary, can be supported from other provisions of this section. Each one of them contemplates dispossession of a bhumidhar for extinguishing his title. It is in this sense that Section 189 (b) has to be understood. Any other meaning given to it would defect the intention of the legislature. It is the settled rule of construction that to ascertain the legislative intent all the constituent parts of action are to be taken together and each word, phrase or sentence is to be considered in the general light of the purpose for which the same is enacted. These words and phrases occurring in a statute are not to be taken in isolation, torn out of its context. The word has to be read together and to be construed in the light of the purpose and object of the section. The object of Section 189 obviously is to provide for the extinction of right of a bhumidhar who loses possession of the land. The meaning of the word "acquired" therefore must take its colour from the context in which it appears. The word "acquisition" means the act of becoming the owner of certain property. The act by which one acquires or procures the property in any thing. Considering the scheme of the Land Acquisition Act, the irresistible conclusion would be that ownership is acquired by the acquiring body or the State Government only when the possession is taken. In the context, therefore, the word "acquired" should be deemed to have been used in the sense of a bhumidhar losing possession of his land on account of acquisition of the same under the law for the time being in force.

In the instant case, from the copy of the award filed in the High Court, it appears that possession was taken on 16669. Upon the taking of possession, the rights of Allah Razi were extinguished under Section 189 (b). The award was prepared in the name of the heirs of the deceased Allah Razi. A certified copy of the application filed by the respondents before the Special Land Acquisition Officer on 3479 showed that Allah Razi died on 3319/8 before the award was given. Consequently, so long as Allah Razi was alive, possession had not been taken. As possession had not been taken his right, title and interest over the land did not extinguish. That being so, upon his death, the plaintiff inherited the property under Section 171 of U. P. Zamindari Abolition and Land Reforms Act. Hence, upon the award being given, she was entitled to get one fifth share. The Courts below were wrong in holding that the right to get compensation had to be determined in accordance with the personal law of the appellant. The view taken by the Courts below was that as the question was now that of disbursement of money, the inheritance had to be determined in accordance with personal law.

In the instant case, I have found above that Allah Razi died before the award was given. So long as the award had not been given, the plaintiff had a right, being the widow of the predeceased son, to inherit the land which had been notified for acquisition. Accordingly, upon the determination of the compensation, she would be entitled to get her share out of it. It is not necessary for me to consider the controversy in relation to a problem where a person owning the property, whose land has been acquired dies after the award has been given. Such a situation does not arise before me.

For the reasons given above, the appeal succeeds and is allowed. The judgment and decree of the two Courts below are set aside. The plaintiff''s suit is decreed and it is held that the plaintiff is entitled to lift Rs. 19,571.79 p. of her share of the compensation awarded by the Land Acquisition Officer. In the circumstances, the parties shall bear their, own costs.

