
(1973) 01 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 966 of 1971

Kesar Singh and Others

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 09-01-1973

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(1), 18(2), 6, 9

Citation : AIR 1973 P&H 424

Hon'ble Judges : Harbans Singh, C.J; Bal Raj Tuli, J

Bench : Division Bench

Judgement

1. This order will dispose of 20 Civil Revisions, i.e. C. R. 966 of 1971 and C. Rs. 515, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 602, 603, 604, 733, 734, 735 and 750 of 1971 in which the point involved is the same. In all these revisions, excepting C. R. 966 of 1971, applications made u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), by the cosharers of the Khatas of the land acquired under the Act were forwarded by the Collector to the District Judge, but the Additional District Judge to whom these applications were entrusted for disposal, rejected them on the ground that a joint application u/s 18 of the Act was not warranted. Aggrieved by this order, the respective applicants filed these revisions. In Civil Revision No. 966 of 1971 the Collector rejected the application and declined to refer the same to the District Judge on the same ground.

2. Facts, which are not disputed are that in each case the applicants, who made the application jointly u/s 18 of the Act, were co-owners in a joint Khata and no partition had taken place inter se between the cosharers. Thus it is clear that each one of the cosharers must be deemed to be owner in every inch of the land included in the joint Khata and it could not be said that a particular cosharers was the owner of a particular piece of land or of particular Khasra numbers in the joint Khata. Prima facie, therefore, a joint application was quite competent. The learned Additional District Judge, however felt bound by a decision of this Court

in *Shangara Singh v. The Punjab State*, 1970 Cri LJ 644 and further relying upon *Ch. Kehar Singh and Another Vs. Union of India (UOI) and Another*, and *Balwantrao K. Shukla Vs. Dalwadi Dahya Chhagan and Others*, held that a joint application was not in accordance with Section 18 of the Act.

3. It is well settled law that if an application is not in accordance with the provisions of Section 18 of the Act, then such an application cannot be entertained. It is, therefore, necessary to examine the relevant provisions of Section 18 which are as under:

"(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2)....."

4. From the above it is clear that the person making the application should be a person interested in the grant of compensation and he should not have accepted the award, and he should make an application in writing to the Collector for the matter being referred for the determination of the Court. The matters in respect of which he can raise objections are--

(i) measurement of the land,

(ii) the amount of compensation; and

(iii) the persons to whom it is payable or its apportionment.

5. It is not disputed that all the cosharers of the joint Khata of the land which had been acquired are persons interested in the matter. They had also not accepted the award and they had made an application in writing. Now even if they dispute the measurement of the land, such an objection would relate to the entire area in the Khata and not to a particular Khasra number or his own share in the Khata. Similarly the amount of compensation would be in respect of the entire Khata. So far as the apportionment between themselves is concerned, the revenue record clearly mentions that their share are equal. Thus, in fact, the question for determination is only one, namely, what is the reasonable compensation to be paid for the entire land in the Khata and what is the measurement of that Khata. In fact, these disputed matters can satisfactorily be determined only if all the cosharers are before the Collector. Therefore, all the cosharers must be parties to the proceedings, whether as petitioners or as respondents. We do not understand what possible objection can be made in a case like this between the cosharers. The fact that their shares have been defined would only facilitate the apportionment between the parties.

6. One other fact that was taken into consideration in holding that joint application did not lie was that co-sharers had made their separate claims before

the Collector and that u/s 9 of the Act notices were sent to all the co-sharers. These factors will have absolutely no bearing on the point whether a joint application was competent or not. Even when each of the co-sharers had made separate claim, the claim would be qua his share in the whole Khata and could not possibly relate to any particular Khasra number. In fact, there is a likelihood of an anomaly arising if separate applications are made by such co-sharers. Supposing, for example, a co-sharer files an application u/s 18 of the Act qua his share in the joint Khata within two days of the making of the award, the Collector refers the matter soon thereafter and the District Judge, who is seized of such an application, may proceed to determine the proper compensation and give his decision, say, within six months of the filing of the application. Another co-sharer files the application just one day before the expiry of Six months" period of limitation that is provided in clause (b) of sub-section (2) of Section 18 for a person who is not present at the time of making the award. For one reason or the other delay is caused in the office of the Collector in forwarding this reference to the District Judge and, in fact, he refers it after the decision in the earlier application. The second applicant, not being a party to the earlier proceedings, would not be bound by the decision given by the District Judge earlier and he may produce better evidence on the basis of which the Court can come to a finding that he is entitled to a higher compensation. Thus there will be two contradictory decisions of the Court regarding the land situated in the same Khata. From this it is clear that where there is only one basis for the determination of the quantum of compensation in a case like the present one, where the Khata is joint, all the co-sharers must be parties and it is rather desirable that a joint application is made.

7. In Shangara Singh's case 1970 Cri LJ 644 (supra) the facts were entirely different and that is no authority for the proposition that a joint application by the co-sharers of a Khata does not lie. There three sets of co-owners filed one joint application. Each set was the owner of different Khasra numbers. The Collector rejected that application and the matter came up before this Court. The learned Single Judge referred to the reasons given by the collector which were as follows:--

"Even in the notification u/s 6 of the Land Acquisition Act different land owners are shown as owners of different Khasra numbers. For example Shingara Singh and Rattan Singh own different Khasra numbers. Hazara Singh, Lacha Singh, Sardara Singh, Piara Singh, Balkar Singh and Smt. Tejo and Tari own different Khasra numbers. Darshu, Dalip Singh and Surti own different Khasra numbers. Tara Singh, Dalip Singh, Naranjan Singh and Anup Singh own different Khasra numbers. Besides this some of these land owners own land in village Rayya while others in village Cheema Bath. So the petitioners have no combination whatsoever on the basis of which they can file a single application against the provisions of the Act."

As a matter of fact in paragraph 6 of the report this is what was stated by the

learned Single Judge:--

"Lastly, learned counsel for the petitioners contended that petitioners 1 to 7, 8 to 10 and 11 and 13 form three sets and that on this score, the application be allowed. I am unable to accept the contention inasmuch as the three sets have filed the instant application jointly. The matter might have been different if each of the three sets had filed three separate applications."

8. In the present case, as already stated above, each set of co-sharers who have a joint Khata has jointly filed an application. The co-sharers of different Khatas have not filed a joint application as was the position in Shangara Singh's case 1970 Cri LJ 644 (supra).

9. The learned Single Judge also referred to the decision in Ch. Kehar Singh and Another Vs. Union of India (UOI) and Another, . This case is hardly any authority for the proposition that a joint application in the circumstances given above does not lie. The head note runs as follows:--

"If the property acquired is joint and the co-owners have no distinct and specified shares therein, then a reference u/s 18 of the Act by one of the co-owners for the enhancement of the compensation awarded by the Land Acquisition Collector will ensure for the benefit of other co-owners as well. In such a case, it can be safely concluded that the co-owner who is wanting enhancement in the compensation was also acting on behalf of the other co-owners, because their interests are joint and indivisible. Once his share is specified, he would be acting on his own behalf only. Till that stage is reached he would be deemed to be acting on behalf of all the co-owners in the property."

10. Similarly, the decision given by Shamsheer Bahadur, J., in Maharaja Harinder Singh and Others Vs. Punjab State, , does not in any way support the contention that a joint application in a case like the present, where there is one joint Khata which has not been partitioned, does not lie. The relevant part of the head note is as follows:--

"Where the land belonging to several claimants was taken as one parcel and at no stage of the proceeding it was determined what separate interest each claimant had in the land, the Collector, on application made u/s 18(1) on behalf of some of the claimants for apportionment and enhancement of the compensation, is bound to make a reference to a Civil Court.

....."

11. For the reasons given above, we feel that the learned Additional District Judge took a wrong view of the law and that the joint applications which were filed in respect of the joint Khatas were maintainable. We, therefore, accept the 19 revisions in which the references were rejected by the Additional District Judge, and remand those cases to the District Judge, Ludhiana, for trial according to law. He may either keep these references on his own file or entrust the same to an Additional District Judge for disposal.

12. For the same reasons Civil Misc. Revision No. 966 of 1971, where the Collector had refused to refer the matter, is also accepted, and the Collector is directed to refer the matter to the District Judge in accordance with law. The petitioners in all the petitions will have their costs.

13. Revision accepted.