
(2014) 08 P&H CK 0144

In the Punjab And Haryana At Chandigarh

Case No : RFA Nos. 3275 of 2008 and 4170 of 2010 (O&M)

Kishan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 02-08-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 30, 4, 6

Citation : (2014) 08 P&H CK 0144

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : Sharad Aggarwal for Lokesh Sinhal, Advocate for the Appellant;
Rajeev Kwatra, Senior Dy. Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Dr. Bharat Bhushan Parsoon, J.—These Regular First Appeals are being taken up for adjudication together as these are connected with each other.

2. For the purpose of development of Sector 61, Faridabad pursuant to notifications dated 09.05.1995 and 06.05.1996 under Sections 4 and 6 respectively of the Land Acquisition Act, 1894 (hereinafter mentioned as "the Act"), some land was acquired by the State of Haryana.

3. So far as RFA No. 3275 of 2008 is concerned, land measuring 8 Kanals 10 Marlas situated in Village Malerna, Tehsil Ballabgarh, District Faridabad was acquired. Compensation @ Rs. 1,50,000/- per acre was awarded by the Land Acquisition Collector (hereinafter mentioned as the "Collector") whereas it being shamlat land proprietors of Village Malerna had filed a petition u/s 18 as also u/s 30 of the Act.

4. Yet another petition was preferred by Kishan son of Nihal wherein it was claimed by him that he was cultivating the land as Gair Morusi and thus was entitled to compensation. Proprietors had claimed that he was not a Gair Morusi but was only rendering services at the Piao (water shed) but at the relevant time

had not been rendering services for providing drinking water to the villagers and passersby at the Piao (water shed) as he had been employed in a factory at Faridabad. In short, it was claimed that his name was wrongly entered into revenue record though he was neither in possession nor had any right or title in the land.

5. Accepting the reference petition filed by Kishan Chand and dismissing the petition preferred by the proprietors Nathi etc., Kishan Chand was held entitled to compensation @ Rs. 450/- per sq. yd. with all statutory benefits.

6. By way of this appeal from the proprietors, it is claimed that once respondent Kishan had stopped rendering any services to the villagers he was liable to be evicted as he had no right, title or interest in the land to the prejudice of the Biswedars of the village and thus was not entitled to any compensation. It is claimed that rejecting the claim of respondent No. 2 Kishan, proprietors viz. appellant No. 1 and proforma respondents No. 3 to 18 are entitled for compensation @ Rs. 1,000/- per sq. yd. as the suit land had great potential to be developed as industrial, commercial as well as residential area.

7. Neither counsel for respondent No. 2 i.e. Krishan nor counsel for respondents No. 3 to 18 viz. proforma respondents preferred any appeal though counsel for the respondent State has fiercely contested the claim of the appellants.

8. When the claim of the appellant and proforma respondents is that respondent Kishan had left the land unattended and was no more rendering services of providing drinking water to the villagers at the Piao (water shed) established in the land, he was not entitled for any compensation. Stand of the respondent Government of Haryana is that when revenue record continues in favour of respondent No. 2 and at no point of time, he had been evicted therefrom, he cannot be said to be a persona non grata on the land.

9. At the outset to remove contention of some names of the contesting claimants, it is mentioned that appellant Kishan is son of Nihal and is one of the proprietors who claim ownership of the acquired land. Name of contesting respondent No. 2 is also Kishan Chand but he is a different person being son of Deep Chand. Claim of compensation in his favour had already been adjudicated by the reference court, award of which court is under challenge.

10. Jamabandi for the year 1965-66 (Ex. P-8) though records the land in dispute to be Shamlat Deh and thus in the ownership of proprietors of the village, but in the column of cultivation, it is shown to be in possession of Bohndedars for running the Piao. As per column No. 9 of the Jamabandi, he was not required to pay any rent in lieu of services so rendered and was to utilise the land in his possession in lieu of services rendered by him at the Piao. One Harbhajan Singh son of Jiwan Dass then was shown as rendering services as Bohndedar at the Piao. This position continues all through till the year 1995-96 (Ex. R-2), with only one change that in the year 1985-86 (Ex. R-4), respondent Kishan Chand S/o Deep Chand was substituted in place of Harbhajan Singh as the person rendering

services at the Piao. This position that Kishan Chand, respondent No. 2 was rendering services at the Piao when he was substituted in place of earlier Bohndedar Harbhajan Singh in the year 1985-86, is not in dispute. The land was acquired pursuant to notification dated 09.05.1995 u/s 4 of the Act. Thus, much earlier to the date of acquisition, name of respondent Kishan Chand had started appearing in the revenue record and there is presumption of truth attached to it, which remains un-rebutted.

11. It also remains a fact that till date neither any entry adverse to respondent Kishan Chand has emerged nor he was evicted from the land by any competent court. Merely by making allegations against respondent Kishan Chand that he was not rendering any services at the Piao or that the land had reverted to the owners, is not correct. There is neither any finding of fact nor there is any material produced by the proprietors to prove it as a fact even now that respondent Kishan was not rendering any services at the Piao and thus had rendered himself liable for divestiture of land from his possession which he was holding as a Bohndedar. There is firm finding of fact recorded by the reference court which could not be dislodged by the appellant and the proforma respondents, and thus claim of the appellants neither on facts nor on law, has any merit.

12. Once the appellant and proforma respondents-proprietors have not been able to sustain their claim to the compensation of the acquired land, their plea of enhancement of compensation also is inconsequential in addition to being unsubstantiated. Respondent Kishan had not filed any appeal challenging the award of 01.09.2007 in his favour claiming any enhancement. Sequelly, there being no merit in the appeal, the same is dismissed.

13. So far as RFA No. 4170 is concerned, reference court vide impugned order dated 20.02.2009 had categorically held that the appellants being in unauthorised possession were not entitled to any compensation. Claim of appellant-petitioners Dan Singh, etc. was denied, relying upon decree sheet dated 13.10.1987 whereby possession of them was admitted but as unauthorised occupants, therefore, it was held to be unauthorised. Though Faridabad Complex Administration as it then was, had been directed not to dispossess them except in due course of law, claim of compensation of acquisition of the land preferred by them was declined.

14. In this Regular First Appeal impugning the award claim of the appellants is that once they are proved to be in long possession, they are entitled to compensation on the basis of their possessory rights. It is claimed that findings of the reference court are wrong on facts as also in law. Compensation @ Rs. 450/- per sq. yd. with statutory benefits has been claimed.

15. Claim of the appellants that they had been in cultivating possession of the land acquired by the State as tenants for the last more than 25 years on payment of nominal rent and had acquired occupancy rights of ownership

whereas the Municipal Corporation, Faridabad, which is successor of Faridabad Complex Administration had no right in the land and they could lay no claim to compensation, could not be vindicated before the Collector and reeefcore the reference court by the appellants by any of convincing and cogent evidence. Daulat Ram for the appellants had made only sweeping statement that prior to acquisition of the land the appellants were in cultivating possession of the land as tenants.

16. Revenue record produced by the appellants does not help them. Though Jamabandi for the year 1990-91 (Ex. P-1) shows appellants Dan Singh etc. to be in possession of the land measuring 10 Kanals 10 Marlas but such possession is without payment of any rent. Column No. 9 of the Jamabandi (Ex. P-1) is blank and thus this entry goes against the interest of the appellants. Even Jamabandi for the year 1995-96 (Ex. P-2) being to the same fact does not help to the appellants. Khasra Godawari entries either do not do any good to the appellants.

17. Abhay Ram was predecessor in the interest of appellant Dan Singh etc. Incidentally, he had been in litigation with the then Faridabad Complex Administration. Though cojoint reading of judgments dated 12.12.1986 (Mark A) and 13.10.1987 (Mark B) go to prove possession of said Abhay Ram but such possession has been held to be unauthorised, he being a trespasser. His plea that he was a tenant, has been rejected. He having not been proved to be a tenant or a lessee of the Municipal Corporation, Faridabad or its predecessor i.e. Faridabad Complex Administration at the time of notification u/s 4 under the Act i.e. on 09.05.1995, neither he nor his successor-in-interest the appellants are entitled to any compensation.

18. Rather the appellants and their predecessor"s in interest have already reaped the fruits from the land in their unauthorised possession and that too even after acquisition of land, and as such they cannot be given any compensation in this account. Finding to this effect recorded by the reference court, do not require any interference being correct on facts as also in law.

19. Upholding Award dated 01.09.2007 of the reference court under appeals, finding no merit in these appeals, the same are dismissed.