
(2001) 09 DEL CK 0125
In the Delhi High Court
Case No : S. No. 3042 of 1996

Pushpa Devi and Another

APPELLANT

Vs

Sarti Devi and Others

RESPONDENT

Date of Decision : 12-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Land Acquisition Act, 1894 — Section 12, 12(2), 18, 19, 30
Specific Relief Act, 1963 — Section 34

Citation : (2001) 94 DLT 835 : (2002) 61 DRJ 531

Hon'ble Judges : Om Prakash Dwivedi, J

Bench : Single Bench

Advocate : C.B. Verma, for the Appellant; S.S. Vats, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Dwivedi, J.—The plaintiff has filed this suit seeking declaration to the effect that the plaintiff is entitled to the entire enhanced compensation in respect of land of the deceased Mange Ram acquired by the Collector's Award No. 1448-86/97 and enhanced by the learned Additional District Judge in Land Acquisition case No. 34/94.

2. Briefly stated, the facts as pleaded in the plaint are that Sh. Mange Ram, the predecessor-in-interest of the plaintiff owned agricultural land in village Tikri Khurd, Delhi, About 75 bigha of his land was acquired by the Government of India in the year 1986-87 in respect of which Mange Ram was awarded compensation by the Land Acquisition Collector, Delhi. A reference for enhancement was made u/s 18 of the Land Acquisition Act, 1894 (for short the Act) and the compensation was enhanced by Mr. S.M. Aggarwal, learned Additional District Judge to the tune of Rs. 1,08,24,971.82. The said amount of compensation was apportioned equally between the defendants Nos. 1 to 4 who are the widow and daughters of the deceased Mange Ram and the plaintiff and defendant No.5 who are the heirs of the Laxmi Chand pre-deceased son of

Mange Ram. it is now alleged by the plaintiff that Sh. Mange Ram had executed a Will dated 12th February 1992 under which the plaintiff and the defendant No.5 who are the LRs of his pre-deceased son Laxmi Chand become entitled to the whole of the amount of the enhanced compensation and no share was given to the defendant No.1 to 4 in the said will. However, the said will was concealed by the defendant No.1. It is alleged that the plaintiff noticed the Will dated 12th February, 1992 by chance and hence the suit.

3. Defendants contended that the matter regarding enhancement/apportionment of the compensation stands decided by the learned Additional District Judge u/s 18 of the Act and the suit based on the alleged Will dated 12th February, 1992 is not maintainable. It is alleged that the plaintiffs had filed an application on the basis of the Will dated 12th February, 1992 but the Court did not accept it and the plaintiffs did not file any appeal against the orders of the learned Additional District Judge so the present suit is not maintainable. Besides defendants have pleaded that the alleged Will dated 12th February, 1992 is a forged one. Mange Ram died on 13th February, 1992 in the hospital and in that condition he could not have executed a Will on 12th February, 1992.

4. Vide order dated 4th May, 2001, Hon"ble Mr. Justice C.K. Mahajan listed the case for arguments on the question of maintainability of the suit at the request of the learned counsel for the parties. Accordingly, I have heard arguments on the point of the maintainability of the suit and perused the record.

5. It is admitted case of the parties that about 75 bigha of land belonging to Mange Ram was acquired by the Government vide Collector's award No. 1448/86-87 and on reference being made to the Court u/s 18 of the Act vide LA case No. 36/94 the compensation was enhanced to Rs. 1,08,24971.82. This compensation was apportioned equally between the widow, three daughters and LRs of the Laxmi Chand the pre-deceased son of Mange Ram. thus the plaintiffs and defendants No.5 together got 1/5th share as LRs of Laxmi Chand whereas the defendant No.1 to 4 who are the widow and three daughters of Mange Ram also got 1/5th share each. In para 4 of the preliminary objections and in para 6 on merit of the written statement the defendants have specifically pleaded that the plaintiffs had filed a similar application before the learned Additional District Judge who was dealing with the reference under 18 of the Act alleging therein that under Will dated 12th February, 1992 the LRs of Laxmi Chand alone are entitled to the entire compensation but it did not find favor with the Court. In replication the plaintiffs have no specifically denied the learned Additional District Judge who was dealing with the land acquisition case and same did not find favor with him. All that plaintiffs plead in the replication is that no order was passed by the learned Additional District Judge which could be appealed against. Admittedly, the plaintiffs did not file any appeal to the High Court u/s 54 of the act against the order of the learned Additional District Judge regarding the enhancement and apportionment of the compensation so the said order passed by the learned Additional District Judge u/s 18 the Land Acquisition Act has

become final. The question, Therefore, arises whether the present suit seeking declaration of the plaintiffs entitlement to get the entire amount of enhanced compensation exclusively is maintainable? The submission of the learned counsel for the defendants is that the Act provides a complete machinery for the determination of all questions regarding apportionment of the compensation and Therefore this suit for declaration will not be maintainable.

6. In order to appreciate the respective submissions of the parties, it will be helpful to refer to the relevant provisions of the Act namely Section 18, 30 and 54 of the Land Acquisition Act which are as under:-

18. Reference to court:- (1) Any person interested who has not accepted the award may, by written application to the Collector, required 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) The application shall state the grounds on which objection to the award is taken:- Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award:

(b) in other cases, within six weeks of the receipt of the notice from the collector u/s 12, Sub-section (2); or within six months from the date of the Collector's award, whichever period shall first expire.

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

54. Appeals in proceedings before Court:- Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the code of Civil Procedure, 1908, and in Order XLIV thereof.

7. From the bare perusal of the provisions of the Section 18,30 and 54 of the Land Acquisitions Act, reproduced above, it becomes clear that all the disputes regarding the apportionment and enhancement of the compensation are to be dealt with by the Court u/s 18 of the Act and any part not satisfied with the order of the Court u/s 18, may file an appeal u/s 54 of the Act. The plaintiffs did not file any appeal before the High Court u/s 54 of the Act challenging the order of

learned Additional District Judge regarding apportionment and enhancement of compensation. Thus the matter regarding the enhancement and apportionment of compensation has assumed finality. The defendants have already got their share of compensation as per the orders of the learned Additional District Judge as pleaded by them in their written statement, so the matter regarding apportionment and enhancement stands closed as per scheme of the Act.

8. In the case of AIR 1939 133 (Privy Council) it was held if the dispute as to the title to the land between the parties claiming compensation is decided by the Judge to whom a reference was made u/s 18 of the Act, the matter is res judicate in a later suit involving the same issue. In that case it was argued that the question of ownership was never submitted by the Collector to the Court and no specific decision on the point of ownership was given by the Court while dealing with the reference u/s 18 of the Act. The Privy Council repelled these arguments with the observations that the Collector had furnished the requisite information u/s 19 of the Act while making reference to the Court. Thus the Court had before it not only the question of amount of compensation but also the further question as to the persons to whom the compensation was payable and the Court gave a specific finding holding that the appellant was entitled to the entire compensation. Therefore the decision of the Court u/s 18 of the Act is binding upon the parties and the matter is res judicata. In the present case also it is admitted between the parties that the plaintiff had filed an application before the Court u/s 18 of the Act claiming the entire compensation on the basis of the alleged Will dated 12th February, 1992 but it did not find favor with the Court yet the plaintiff preferred to appeal to the High Court u/s 54 of the Act. In replication the plaintiff has simply averred that the Court did not pass any order which could be appealed against. If no specific order was passed by the Court on the application that by itself could be a ground to prefer an appeal u/s 54 of the Act. While deciding the question of apportionment, the Court has necessarily to look into the title of the parties and the apportionment will have to be done in proportion to the entitlement. Therefore, determination of a question of compensation and its apportionment necessarily involves a decision on the question of title which could be appealed against. As already stated, in the present case no appeal was filed by the plaintiff u/s 54 of the Act so the order of the Court u/s 18 and 30 of the Act regarding the parties entitlement to compensation in proportion to the title has become final. The same Therefore will operate as res judicate and will be binding on the parties.

9. Further when the Act provides a complete machinery and creates a special forum for the determination of question regarding the amount and apportionment of compensation the jurisdiction of Civil Court is impliedly ousted. In the case of Saibesh Chanddra Sarkar v. Bijoychand Mohatop Behadur AIR 1922 Cal 4 (DB) it was held with reference to Land Acquisition Act, 1894 that when the jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive. The Land Acquisition Act, 1894 creates a special jurisdiction and

provides a special remedy. Therefore, it will not be reasonable to hold that the legislature having provided a special remedy in the Land Acquisition Act intended to make it optional with a party to apply for a reference u/s 18 or to institute a suit in the ordinary Civil Court. In that case the facts were that the plaintiff (the Zemindar) and the defendant, (the putnidar) were served with notices u/s 9 of the Land Acquisition Act. The Collector apportioned the compensation half and half between the Zeminder and the Putnidar. Neither party applied for any reference u/s 18 of the Act and putnidar withdrew the amount awarded to him by the Collector. The Zeminder thereupon filed the suit for recovery of amount which had been withdrawn by the defendant on the ground that under the puthi Kabuliyat, the putnidar was not entitled to any portion of the compensation money. the defendant thereupon raised the plea that the plaintiff ought to have applied for reference u/s 18 of the Act and no separate suit lies. The Courts below had over-ruled that contention so the defendant appealed to the Calcutta High Court. High Court held that the plaintiff's suit was not maintainable. It was observed that having been served with the notice u/s 9 of the Act the plaintiff was bound to apply u/s 18 of the Act after he was dis-satisfied with the award and he cannot maintain a suit in the ordinary Court. It was observed that it is an established principle that where by an Act of legislature powers are given to any person for a public purpose from which an individual may receive injury if the mode of redressing the injury is pointed out by the statute, the ordinary jurisdiction of Civil Courts is ousted and in the case of injury the party cannot proceed in action in Civil Court. The High Court of Calcutta took note of the proviso to Section 31(2) which lays down that "nothing herein contained shall as fact the liability of any person who may receive the whole or any part of the compensation awarded under this Act, to pay the same to the person lawfully entitled thereto." and held that this proviso applies to only to those persons who were not served with the notice u/s 9 of the Act. There may be persons who may be having some interest in the acquired land but were not known to the Collector. The proviso to Section 31 Sub-section (2) takes care of such persons. In the present case all the parties to the suit were parties before the Collector also. Therefore, on the authority of the said Division Bench decision of Calcutta High Court it must be held that this Court has no jurisdiction to entertain a suit which seeks to re-open the question regarding entitlement and apportionment of the compensation.

10. Besides, the defendants have already received their share of enhanced compensation from the Court as pleaded by defendants in para 5 of the written statement which is not specifically denied by the plaintiff in the replication. The plaintiff must have filed suit for the recovery of compensation money which has already been disbursed to the defendants but the plaintiff has not done so. So in view of the proviso to Section 34 of the Specific Relief Action 1963 the suit for declaration implicate is not maintainable.

11. In the result the suit is dismissed as not maintainable.