
(2020) 01 P&H CK 0111

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20257 Of 2017 (O And M)

Savita Sharma

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 30

Citation : (2020) 01 P&H CK 0111

Hon'ble Judges : G.S.Sandhawalia, J

Bench : Single Bench

Advocate : Jitender Malik, Sudeep Mahajan, M.L. Sarin, Ritesh Aggarwal, Ritesh Aggarwal

Final Decision : Partly Allowed

Judgement

G.S.Sandhawalia, J

The challenge in the present writ petition is to the order dated 06.07.2017 (Annexure P-5) passed by respondent no. 2, the Land Acquisition Collector in a petition filed under Section 30 of the Land Acquisition Act, 1894 (in short 'the Act') whereby, the petition has not been referred to the Civil Court of original jurisdiction.

The said respondent came to the conclusion that the private respondents no. 2 to 4 therein, who are now arrayed as respondents no. 3 to 5 herein, names were recorded in the ownership column and whereas the name of the petitioner was not mentioned in the revenue records. It was noticed that the compensation of the above said acquired land had been assessed by the Land Acquisition Collector and also thereafter by the Reference Court and received by the said private respondents. Other sisters of the petitioner as well as the respondents had appeared before the said officer and agreed that the compensation be released in favour of the private respondents. It was noticed that the petitioner had also raised the issues regarding the forged Wills and, therefore, the said respondent

came to the conclusion that he had no jurisdiction to decide the issue regarding the Wills and, thus, rejected the petition filed under Section 30 of the Act and held that the private respondents were entitled to receive the compensation of the acquired land.

Counsel for the petitioner has vehemently submitted that the said respondent had no jurisdiction to come to the conclusion that the private respondents were entitled to receive the compensation of the acquired land and the matter should have been referred to the Civil Court under Section 30 of the Act. It is contended that it is settled position that the Land Acquisition Collector is not a Court and, therefore, had no jurisdiction to decide the issue inter se the parties in a summary manner on merits.

Counsels for the private respondents, on the other hand, justified the said order on the ground that Section 30 of the Act provides that the dispute "may" be referred and since the issue is already pending before the Civil Court qua the dispute inter se the family, therefore, the petition under Section 30 of the Act has been rightly rejected.

A perusal of the facts would go on to show that the land was acquired vide notification dated 19.05.2008 falling in village Budhera, Tehsil and District Gurgaon for the public purpose of extension of water works. Award No. 64 as such was passed on 21.12.2009 fixing the market value by respondent no. 2. It is a matter of fact that the matter was thereafter taken to the Reference Court under Section 18 by the private respondents no. 3 to 5 and enhancement was granted on 16.11.2011. The matter was carried to this Court in a regular first appeal and the market value was further enhanced by this Court on 24.05.2016 (Annexure R-3/7), which has been affirmed by the Apex Court on 05.01.2017 (Annexure R-3/8).

The petition under Section 30 of the Act was filed on 12/13.12.2016 (Annexure P-3) by the petitioner, who is none other than the sister of respondents no. 3 to 5 herein. It was averred that she was the legal heir of Saroj Devi, wife of Om Parkash being the daughter and entitled to receive compensation. Saroj Devi was also owner of 76 kanals and after her death on 23.01.1989, a mutation had been got by her brothers in their favour on 12.05.1989. Resultantly, she raised her claim in a petition filed under Section 30 of the Act dated 12.12.2016 (Annexure P-3) for compensation and prayed that the matter be referred to the District Judge according to her share in the acquired land. Thereafter, an application dated 30.03.2017 (Annexure P-4) was also filed wherein, she brought on record the fact that there was a suit filed on 24.03.2017 and the plea was that a fake and fabricated Will of Om Parkash and his wife Saroj Devi had been set up and the case was pending in the Court of Civil Judge-cum-Judicial Magistrate Ist Class titled Savita Sharma vs. Ashok Sharma and others fixed for 01.04.2017. Thus, it was prayed that the enhanced compensation be withheld upto the final decision of the civil suit. Resultantly, the said order as such has been passed.

Provisions of Section 30 of the Act read thus:-"30. Dispute as to apportionment When the amount of compensation has been settled Under section 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."

Counsels for private respondents have referred to the judgments of the Apex Court in *Sharda Devi vs. State of Bihar and another*, 2003 (3) SCC 128 and *Ramesh Chand and others vs. Tanmay Developers Pvt. Ltd. and others*, 2017 (13) SCC 715 to contend that admittedly the matter is pending before the Civil Court. Therefore, since disputed questions of fact arise regarding the validity of the Wills in question executed by Om Parkash and Saroj Devi, the prayer to make a reference as such in such circumstances would not be justified.

Counsel for the petitioner, on the other hand, has submitted that the findings which have been recorded by respondent no. 2 are not sustainable and he should have stayed his hands qua the said observations.

There is considerable merit to this extent that the Collector should not have observed on the merits of the case. The judgments referred to above would go on to show that there is no limitation as such regarding the claim for apportionment. Merely because the petition was instituted in December, 2016, would not as such take away the claim of the petitioner staking her claim in the share of the property. However, the fact remains that admittedly there are two Wills which are subject matter of adjudication and a civil suit has already been filed in the Court of competent jurisdiction. In *Ramesh Chand's case* (supra), it was observed as under:-

"7. It was not rightly disputed that several civil suits with respect to refund of the earnest money and for specific performance of the agreement to sale were filed by the respondent No.1 before reference was sought under Section 30 of the Act. Once remedy in the form of civil suits had been resorted to, in our considered opinion, it was not at all proper exercise of power to invoke provisions under Section 30 of the Act with regard to apportionment of the compensation by directing refund of earnest money. It is not mandatory to make a reference to the civil court under Section 30 and adjudication of dispute in an appropriate case can be ordered by way of the civil suit. In the instant case civil suits had already been preferred by Respondent No.1. It was not appropriate to decide same dispute under Section 30.

8. In the instant case, there were serious disputed questions as to whether earnest money had been rightly forfeited by the land owners due to the failure of the Respondent No. 1 to obtain the sale deeds executed within stipulated time fixed under the agreements, whether the respondents were ready and willing to purchase the property and had arrangement of balance consideration for payment to land owner. Whether the power of forfeiture was rightly exercised by the land owners as claimed by them. The Civil Court was already in seisin of the

matter as such Reference Court had rightly rejected the reference made under Section 30 of the Act and rightly asked parties to await outcome of the regular civil suits.

9. The High Court in the impugned judgment has not decided aforesaid objections raised by the appellants/land owners without examining facts and circumstances of the case and due to pendency of civil suits, it was not open to the High Court to order refund of the earnest money.

10. A perusal of Section 18 of the Act makes it clear that reference can be sought to a civil court with respect to: (i) the measurement of the land, (ii) adequacy and quantum of compensation, (iii) persons to whom it is payable and (iv) the apportionment thereof amongst the persons interested. The application under Section 18 is required to be filed within stipulated time whereas no limitation is prescribed under Section 30 of the Act. It is discretionary upon the court to refer a dispute under Section 30 of the Act. The same is confined to the apportionment of the compensation or as to a person to whom the same is payable. The scope of Section 30 of the Act is narrow as compared to Section 18 as laid down in *G.H. Grant v. State of Bihar* and in *Sharda Devi v. State of Bihar*."

In such circumstances, this Court is of the opinion that referring the matter to the Civil Court of original jurisdiction, as such, would also divest the parties of their remedy of appeal since the matter is already pending before the Civil Judge. The observations of respondent no. 2 that the sisters of the petitioner had appeared before him and deposed in favour of the brothers and, therefore, rejected the claim was without jurisdiction. Respondent no. 2 should have stayed his hands on the said issue by not observing on the merits of the rights of the parties.

Resultantly, the observations made as such by the Land Acquisition Collector on the merits of the case are quashed. It is also to be noticed that the compensation has already been received by the private respondents as no interim order was passed in favour of the petitioner and the application had been filed during the period the issue was pending before the Apex Court. It is accordingly held that the parties shall be bound by the decision of the Civil Court inter se the right of compensation and the Civil Court will decide the issue on merits on the basis of the evidence without being influenced by the observations made herein or by the Land Acquisition Collector.

The writ petition is partly allowed to that extent.