

(1979) 11 DEL CK 0019

In the Delhi High Court

Case No : Regular First Appeal No. 175 of 1969

Sher Singh etc.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-11-1979

Acts Referred:

Citation : AIR 1980 Delhi 270 : (1980) RLR 10

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : Jai Ram Singh and Rekha Sharma, for the Appellant;

Judgement

Avadh Behari Rohtagi, J.

(1) This appeal from the order of the Additional District Judge dt. 22.10.68, was brought by eight appellants. They seek enhancement of compensation for their land acquired by the respondent Union of India. During the pendency of the appeal Sis Ram appellant No. 5 died. An application by his legal representative was made. I dismissed that application on 16.10.79 on the ground that the application was not made within the time limited by law under rule 4(3) read with rall 0.22 of C.P.C. Therefore, the inevitable result is that in so far as Sis Ram appellant No. 5 is concerned the order of the Adj has become final.

(2) A preliminary objection has been raised that the whole appeal is incompetent and must be dismissed in its entirety. The question to be determined is about the effect of death of appellant No. 5 on the rest of the appeal. In order to answer this question it is necessary to ascertain the nature of the claim and the relief sought.

(3) Bhart Singh (deceased and now represented by his legal representatives) and Inderaj, appellants 2 and 3, are sons of Bhola. They had 1/2 share in Khasra Nos. 275, 276, 305 and 306. Sher Singh, Sis Ram, Siri Chand and Mansa Ram, respondents 4 to 7 are sons of Tola. They had the remaining 1/2 share in these Khasra numbers. Each of these respondents 4 to 7 thus had 1/8 share. The

appeal of Sis Ram, respondent No.5, has abated qua his 1/8 share vide my order dated 16.10.1979. The land of Sher Singh and S. Harbhajan Singh, appellants 1 and 8 is quite separate and distinct from the other appellants and there is no dispute that the appeal by these two appellants is competent.

(4) The single question for decision is: Can the appeal of appellants 2,3,4,6, and 7 proceed in the absence of Sis Ram, appellant No. 5 ? Is it imperfectly constituted ? Is there any real danger of the court passing contradictory and inconsistent decrees ?

(5) Firstly I will deal with the question on principle and then on precedent. The land of the appellant was acquired by the Government in proceedings under the land Acquisition Act, 1894 (the Act). The land acquisition collector made the award. (Award No. 1590 dated 28th May, 1963 re : village Piran Garhi where the acquired land of the appellants was situated). He offered compensation to the appellants at the rate of Rs.1,500.00 per bigha. The appellants were not satisfied with the collector's valuation. They made a joint reference under s. 18 of the Act for the adjudication of the court. On reference the Additional District Judge raised the compensation from Rs. 1,500.00 to Rs.2,500.00 per bigha for land abutting on Delhi-Rohtak Road. For land away from the road he increased the compensation from Rs.1,500.00 to Rs. 2,000.00 per bigha. The appellants filed this appeal for further enhancement under S. 54 of the Act.

(6) The decisive fact in this case is that the shares of appellants 2 to 7 are specific and ascertained. Appellants 2 and 3 had one-half share i.e. 1/4 each. Appellants 4, 6, and 7 had remaining 1/2 i.e. 1/8 each. This fact is admitted by the land acquisition collector. It is so stated by him in his statutory statement under sec. 19 of the Act which he submitted to the court with the reference under s. 18. Therefore, the shares of the parties in the acquired land are defined and ascertained; These shares are admitted by the taker of the land as is clear from statement under s. 19. This being so I see no difficulty in proceeding with the appeal. Sis Ram, appellant No.5, has died. He had 1/8 share in the particular land. The appeal qua his share has abated. The order of compensation made by the Adj in so far as he is concerned has become final. But the remaining appellants 2,3,4,6 and 7 can proceed with their appeal. Sis Ram's death will not affect their claim. Appellants 2,3,4,6 and 7 claim enhancement in respect of their specific shares.

(7) Let me test this proposition. Was it open to each of the appellants to make a reference to court under s. 18 independently of others ? I think yes. Each of appellants 2 to 7 had separate share. His share was acquired. His specific share is acknowledged by the Government. The Government must pay him compensation according to his share. He could independently make a claim for enhancement of compensation under s. 18 of the Act. That appellants 2 to 7 made a joint petition of reference under s. 18 ought not to make any difference. The joint reference petition was a combination of references so to speak. Each could have made a separate reference. They all combined. But the core and

essence of the matter is that their claims are separate as their shares are separate, For convenience the reference petition was one; The trial before the Additional District Judge was one. And now the appeal to this court is one. But if the shares are defined, specific and ascertained the appellants could have brought separate appeals. In that case Sis Ram's appeal would have abated. The appeals of others would have been heard. Now if one appeal has been brought the principle remains the same. This ought not to make any difference.

(8) Now I turn to the precedents. Fifty years ago a full bench of five judges of the Lahore High Court in *Sant Singh v. Gulab Singh* (1929) 10 Lah 7 decided this precise point. Whether an appeal can proceed depends on whether the interests of the appellants are or are not separately defined. If the appellant's shares are ascertained the appeal will abate only as regards the interest of the deceased. If the interests of the appellants are joint the appeal cannot proceed, It will be imperfectly constituted and will have to be dismissed as a whole. It was said :

"A distinction must, however, be made between the cases, in which there is a specification or definition of shares or interests and those in which there is no such specification or definition"

(p. 14). The guiding factor is the real nature of the interest of the deceased party", (p. 27).

(9) Applying the principle to the present case it must be held that the abatement of Sis Ram's appeal does not prevent the court from hearing the appeal of the remaining appellants. The death of Sis Ram pending the appeal undoubtedly debars the court of appeal from dealing with his share, but his ceasing to be a party due to death does not prevent the court from determining the controversy with respect to the shares of the remaining five appellants. The present case is one of ascertained shares. The appellants 2 to 7 were not joint tenants but were tenants-in- common, to use a term of English land law. They had certain specific and distinct shares in the land and the mere fact that partition by metes and bounds had not taken place does not seem to me to affect the matter. The death of one of them, namely, Sis Ram, appellant No. 5, "did not and could not convert a tenancy-in-common into a joint tenancy, nor did it affect the shares in which they held the property", (per Tek Chand J. in *Sant Singh's* case *supra* at p. 20).

(10) The full bench decision in 10 Lah. 7 was followed later by a strong court of Harries CJ, Mahajan and Achhru, Ram Jj in *Nanak v. Ahmad Ali*, Air 1946 (404) . This decision was approved by the Supreme Court in *Rameshwar Prasad and Others Vs. Shyam Beharilal Jagannath and Others*, .

(11) Nor can it be said with any show of reason that the court will be passing contradictory or inconsistent decrees in this case if the appeal of the remaining five appellants succeeds. It is true that in respect of Sis Ram, appellant No. 5, whose appeal has abated his heirs will have to rest content with such compensation as was awarded to Sis Ram by the Additional District Judge. But the remaining appellants are entitled to proceed with their appeal for

enhancement and if they succeed they will get a higher compensation than Rs. 2,500.00 per bigha awarded to Sis Ram But it cannot be said that these are inconsistent decrees, even though the subject-matter of the controversy is the same piece of land in the same litigation. The reason is that there is no difficulty in giving effect to these decrees.

(12) The award of the Adj is a decree (s. 26). He passed, so to speak, six decrees in the cases of appellants 2 to 7 in respect of the acknowledged shares of them. One of the decrees has become final. Sis Ram will be paid compensation at the rate allowed by the ADJ. The remaining five appellants will be entitled to enhanced compensation from this court if their appeal succeeds. There is nothing inconsistent in it. It is up to the expropriated landowner whether to make claim for enhancement or not. If there are six co-owners in a particular land some of them may be satisfied with what the collector offers them roay remain satisfied with what the court of the land acquisition judge determines on reference, and some still not satisfied may come to this court for further enhancement and may even go higher up to the Supreme Court.

(13) We are not here dealing with a casa in which one decision settles the dispute one way, and another decision determines it in an entirely different way, with respect to the same property, so that it becomes impossible for the court to carry out both the decisions at the same time. (per Shadi Lal Cj in Sant Singh's case, supra at p. 14) Compensation will be paid to each co-owner in respect of his separate claim in proportion to his share and on the basis of the determination of the value of the land.

(14) Counsel for Union of India contends that the appeal of appellants 2 to 7 cannot proceed in the absence of Sis Ram and ought to be dismissed. She chiefly relies on State of Punjab v. Nathu Ram, Air 1952 Sc 89. That was a case of a joint award for compensation for certain lumpsum in favor of two brothers under the Punjab Land Acquisition (defense of India) Rules 1943. The decree appealed from was joint and indivisible. During the pendency of the State appeal one of the brothers died. The court held that the appeal must fail. The decree was joint in favor of the respondents. There was no specification of shares or interests of the respondents in the subject matter of the decree. The Supreme Court said :

" THE appeal before the High Court was an appeal against a decree jointly in favor of Labhu Ram and Nathu Ram. The appeal against Nathu Ram alone cannot be held to be properly constituted when the appeal against Labhu Ram had abated. To get rid of the joint decree, it was essential for the appellant, the State of Punjab, to implead both the joint decree-holders in the appeal. In the absence of one joint decree-holder, the appeal is not properly framed. It follows that the State appeal against Nathu Ram alone cannot proceed. It is however contended for the State that according to the entries in the village records, Labhu Ram and Nathu Ram had equal shares in the land acquired and that Therefore the appeal against Nathu Ram alone can deal with half the amount of the award. We do not agree. The mere record of specific shares in the revenue records is no guarantee

of their correctness. The appellate Court will have to determine the share of Nathu Ram and necessarily the share of Labhu Ram in the absence of his legal representatives. This is not permissible in law. Further, the entire case of Labhu Ram and Nathu Ram, in their application to the Government for the appointment of an arbitrator, was that the land jointly belonged to them and had been acquired for military purposes, that a certain amount had been paid to them as compensation, that they received that amount under protest and that they were entitled to a larger amount mentioned in the application and also for the income tax they would have to pay on account of the compensation received being added to their income. Their claim was a joint claim based on the allegation that the land belonged to them jointly. The award and the joint decree are on this basis and the appellate court cannot decide on the basis of the separate shares."

(15) I have quoted this decision at length to show that this was a case of a joint decree. This decision has been much misunderstood and misapplied in the land acquisition courts. I myself plead guilty to the accusation.

(16) This decision in no way militates against the view of the full bench in 2nd 10 Lah 7, *supra*. The Supreme Court observed whether an appeal cannot proceed in certain circumstances and has to be dismissed "depends on the nature of the relief sought in the appeal" (p. 90)

(17) In *Crown v. Chanderhhan*, Air 1957 Nag. 8 it was held that where the share of compensation of each claimant is ascertained in the award itself the fact that the award is joint in favor of the respondents is immaterial and the failure to bring the legal representatives of the deceased respondent on record will not result in total failure of the appeal.

(18) In *State of Hyderabad and Another Vs. Mohammed Afzal and Others*, the Supreme Court decision in *Nathu Ram*, (*supra*) was followed and it was held that the state's appeal failed because in a case of joint ownership "every joint owner of the land is the owner of the every cent of the land". The land in question, according to the firman of the Nizam, could not be bifurcated or divided or mortgaged, sold or in any manner dealt with. None of the holders, though entitled to the income and enjoyment in certain proportion to their shares, could partition it or sell it. The land was joint and indivisible. In enjoyment or income the shares were defined. This was held to be a case of joint decree. The state appeal against the claimants was held to be incompetent.

(19) The decision in *Nathu Ram*, (*supra*) has been noticed in *Sri Chand v. M/S Jagdish Pershad Kishan Chand*, Air 1966 Sc 1427, *Ramagya Prasad Gupta and Others Vs. Shri Murli Prasad and Others*, *Dwarka Prasad Singh and Others Vs. Harikant Prasad Singh and Others*, and *Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others*, *la Harihar Prasad* (*supra*) the Supreme Court explained the decision in *Nathu Ram*'s case and said:

" The *State of Punjab Vs. Nathu Ram*, was a case where a joint decree had been passed in favor of two individuals and that was challenged in the appeal before

the High Court. It was common ground that the appeal against one of the joint decree holders had abated owing to none of his legal representatives having been impleaded within the time limited by law and there being none on record to represent his estate. In such a case the only question that could arise would be whether the abatement which ex concusses took place as regards one of the respondents should be confined to the share of the deceased respondent as against whom the appeal has abated, or whether it would result in the abatement of the entire appeal. This would depend on the nature of the decree and the nature of the interest of the deceased in the property. If the decree is joint and indivisible, the abatement would be total. That was precisely the question "which was raised in Nathu Ram's case and the decision in Ram Sarup Vs. Munshi and Others, is also an illustration of the same principle."

(20) It is unnecessary to burden this judgment with other decisions. But it may safely be said that the divergence of judicial opinion on the subject which obtained before the full bench decision of 2nd 10 Lah. 7 no longer exists. It is in the application of the principle that difficulty sometimes arises.

(21) The decision in Nathu Ram was a case of a joint decree. The present case is a case of specific shares. To this Lahore decision will apply. That principle has been accepted in Harihar Prasad's case. The Supreme Court said

" THE important point to note about this litigation is that each of the reversioners is entitled to his own specific share, He could have sued for his own share and got a decree for his share..... Therefore if one of the plaintiff dies and his legal representatives are not brought on record the suit or appeal might abate as far as he is concerned but not as regards the other plaintiffs or the appellant".

(22) Raghunath v. Ganesh, Air 1964 Sg 235 is another illustration where the interests of the parties were separate and independent and it was held that the whole appeal did not abate.

(23) So my conclusion is this. The success of the appeal will not result in contradictory decrees. Some may get more compensation, some less. Sis Ram's heirs e.g. will get less. But it is not impossible for the court to give effect to both the decisions at the same time. Different amounts of compensation can be awarded to different owners according to the determination made in their cases. This happens daily. It all depends on evidence. There is no valid reason why the court should not hear the appeal and adjudicate upon the dispute between the parties who are before it.

(24) For these reasons I hold, both on principle and authority, that on the death of Sis Ram, appellant No. 5, and the abatement of his appeal the right of the remaining appellants to proceed with their appeal for enhancement of compensation remains unaffected. The appeal is competent. It is properly framed. The preliminary objection is rejected. The appeal of appellants 1 and, 8, it is not disputed, is perfectly maintainable and the death of Sis Ram does not affect their rights.

(25) I, Therefore, now proceed to determine the compensation claimed by appellants 1,2,3,4,5,6,7 and 8 in the appeal.

(26) Following the division bench decision in Dalip Singh v. Union of India, Rfa 103 of 1967 decided on first March, 1979, the appellants 1,2,3,4,5,6,7 and 8 are allowed enhancement at the rate of Rs. 1,000.00 per bigha together with 15 per cent solarium and 6 per cent per annum interest on the enhanced compensation from the date of dispossession till the date of payment and proportionate costs.