

(2017) 03 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : 345 of 2008

UMESH CHAND THAKUR & OTHERS

APPELLANT

Vs

LAND ACQUISITION COLLECTOR AND OTHERS

RESPONDENT

Date of Decision : 29-03-2017

Acts Referred:

[Land Acquisition Act, 1984](#), Section 4, Section 31, Section 30, Section 28-A

Citation : (2017) 03 SHI CK 0036

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : Bhupender Gupta, Ajeet Jaswal, Vivek Singh Attri, G D Verma, B C Verma

Final Decision : Disposed

Judgement

1. Under the impugned award, pronounced by the learned Reference Court in Petition No. 58-S/4 of 2007/94, it, proceeded to order qua respondent No.3, namely, Chattar Singh alone holding the entitlement qua compensation amount assessed thereunder. The aggrieved appellants hence for assailing the award pronounced by the learned Reference Court, have instituted the instant appeal herebefore.

2. The paramount reason which prevailed upon the learned reference Court, to declare respondent No.3 to hold the sole entitlement qua the determination of compensation amount pronounced under the impugned award, rested upon the factum of reflections occurring in the jamabandi apposite to the suit land pertaining to the year 1980-81 comprised in Ex. RX also upon the entires embodied in Ex.AW1/C, copy of missal hakiyat qua the suit land pertaining to the year 1985-86, reflections whereof unfold qua one Devi Ram (the petitioner in land reference petition No. 58-S/4 of 2007/94 whereupon the impugned rendition stood pronounced) standing in the apposite column of ownership pronounced to be its owner whereas respondent No.3, Chattar Singh, standing

therein reflected to hold a tenancy under the aforesaid Devi Ram to the extent of 135 share in the undivided holdings. Moreover, in coagulation with the aforestated reflections borne on the aforesaid exhibits, the learned Reference Court also imputed credence to an admission held in the statement of one Suresh comprised in Ex. R-2, holding echoings qua his father inducting respondent No.3, Chattar Singh, as a "gair maurusi" upon the suit land, whereupon, it recorded a conclusive finding qua respondent No.3 holding the status of a "gair maurusi" upon the acquired land, whereupon it stood constrained to render a further finding qua the aforesaid status of respondent No.3 upon the suit land clothing him with automatic statutory bestowment of proprietary rights thereon, significantly, at the time apposite to the issuance of the apposite notification under Section 4 of the Land Acquisition Act, whereby, the respondent concerned initiated proceedings for bringing the relevant land, under acquisition, thereupon, foisting a leverage in him to, to the ouster of the appellants herein, claim the entire amount of compensation determined under the impugned rendition.

3. The sinew of the aforesaid reasoning, has to be tested not in isolation rather stands enjoined to be tested by making an allusion to the recitals unraveled in Ex. RW2/B, exhibit whereof constitutes an application preferred by respondent No.3, Chattar Singh, under Section 28-A of the Land Acquisition Act, 1984 before the Land Acquisition Collector, whereunder he claimed the benefit of the award recorded on 27.05.1994, by the Reference Court, in land reference petition No. 2NS/4 of 1990/89. Though, the patwari in the office of the Collector concerned, whose statement stands embodied in Ex. R-3, has been unable to forthrightly testify therein qua the aforesaid petition constituted by respondent No.3 under Section 28-A of the Land Acquisition Act, standing transmitted by the Collector concerned to the learned Reference Court, for enabling the latter to pronounce an adjudication thereupon, whereas, in Ex. RW2/B a recital occurs qua the respondents therein holding no objection qua the amount claimed by respondent No.3, Chattar Singh, in the latter's petition constituted under Section 28-A of the Land Acquisition Act, 1894 standing disbursed in his favour. It also holds echoings qua the respondents in Ex. RW2/A standing directed by the Collector to make the deposit of Rs.81,925/-. However, no apposite record exists hereat manifesting qua the amount assessed under Ex. RW2/B qua respondent No.3 standing released in his favour, yet therefrom, it is not apt to conclude qua his not receiving its benefit, especially, when no apposite record making the aforesaid bespeakings exists hereat. Nonetheless, articulations occur in Ex. R-3 constituting the statement of the patwari concerned, qua on 4. 10.1985, respondent No.3 under protest receiving the amount of compensation determined under the apposite Award No. 9/83 of 12.6.1983, as pronounced by the Collector concerned, also therein echoings occur qua his prior thereto preferring a petition under Sections 30 and 31 of the Land Acquisition Act before the Collector concerned. However, he continues to depose qua the aforesaid petitions preferred by Chartar Singh standing ordered to be filed, wherefrom, it is

befitting to conclude qua the aforesaid petitions preferred by respondent Chattar Singh never standing transmitted to the learned Reference Court for enabling the latter to pronounce an adjudication thereupon. However, the effect of the aforesaid omission, of the Collector concerned or of respondent No.3 to ensure the further apt transmission of his apposite petition aforesaid preferred prior to his receiving the amount of compensation determined under the award No.9 of 1983 would stand dwelt upon hereinafter. At this stage, it is deemed fit, to thereupon construct, an inference qua respondent No.3 Chattar Singh acquiescing to the payment of compensation determined in his favour by the Collector concerned, under the apposite award No.9 of 1983 also his acquiescing to the relevant pronouncement made under Ex.RW2/B, whereupon, he stood estopped, to, in land reference petition No. 58-S/4 of 2007/94, whereupon the impugned rendition stood pronounced, to hence contest qua his solitarily to the complete ouster of the landowners, standing entitled to receive the entire compensation amount determined thereunder. Furthermore, with respondent No.3 herein, not ensuring the transmission, by the Collector concerned of his petitions aforesaid constituted under Section 30 and 31 of the Act, onwards to the learned Reference Court, whereupon, hence with his contest raised therein standing terminated, thereupon, also the learned Reference Court held no jurisdiction to, when it stood seized only of a composite petition constituted therebefore by the landowners, wherein they sought enhancement of compensation besides canvassed qua the award of compensation amount vis-a-vis respondent No.3 Chattar Singh standing set aside, significantly when the composite petition aforesaid alone warranted pronouncement of an adjudication thereon, to pronounce a verdict qua respondent No.3 more so when for the aforestated reasons he stood estopped to re-agitate a terminated claim.

4. Even though, Chattar Singh stood impleaded as respondent No.3 in reference petition No. 58-S/4 of 2007/94, whereupon he stood entitled to contest the claim canvassed therein by the landowners, thereupon, the learned Reference Court though held jurisdictional capacity to reject his prayers urged thereunder, nonetheless, it did not hold any jurisdictional vigour, to oust the landowner from his/their entitlement, to receive compensation amount adjudged in his/their favour by the authority concerned. Ensuingly, also the according of relief qua the entire compensation amount, adjudged upon the apposite land reference petition aforesaid constituted therebefore by the landowners, hence standing disbursed exclusively qua respondent No.3, Chattar Singh, whereas, the latter had omitted to ensure the onward apt transmission, of his petition preferred before the quarter concerned under Section 30 and 31 of the Act, though, it stood preferred prior to his receiving compensation under protest on 4.10.1985, in sequel to pronouncement of award No. 9 of 1983, whereupon he stood estopped to seek any ouster of the landowner(s) from theirs seeking enhancement of compensation amount from the learned Reference Court upon his/their land Reference Petition No. 58-S/4 of 2007/94. The effect of the aforesaid estoppel, is qua its baulking not only respondent No.3 Chattar Singh from exclusively

claiming the adjudicated compensation amount besides his also standing forestalled to preempt the landowners from receiving the compensation amount awarded under the impugned award also its foisting an embargo upon the learned Reference Court against its totally excluding the landowner(s) from receiving the compensation amount determined by it under the impugned rendition pronounced upon their petition. Consequently, the findings of the learned reference Court qua the aforesaid factum probandum suffers from an inherent jurisdictional vice.

5. Be that as it may, it appears that the learned Reference Court had depended upon the aforesaid exhibits besides upon the apposite acquiescence(s) occurring in the statement of Suresh, comprised in Ex. R-2 to hence hold qua respondent No.3, Chattar Singh holding the status of "gair maurusi" upon the entire land of the landowners. The aforesaid inference stands erected upon a wholly fallacious besides misfounded appreciation of the aforesaid exhibits, especially, when therewithin echoings occur qua respondent No.3 Chattar Singh standing recorded as "gair maurusi" upon 135th share of the landowner(s), wherefrom it is befitting to conclude qua only upon the afore referred share, respondent No.3, Chattar Singh holding rights as a "gair maurusi" under the landowner(s), unless evidence stood adduced holding stark postures qua the earmarked share in exhibits aforesaid constituting the entire share of one Devi Ram in the relevant undivided holdings, brought to acquisition. However, the aforesaid evidence is amiss. In aftermath, it was judicially insagacious for the learned Reference Court to, hence, conclude qua vis-a-vis the entire tract of joint holdings of the landowner(s), respondent No.3 Chattar Singh holding status of a "gair maurusi" nor it was apt for it to conclude qua his alone to the exclusion of the landowner(s) holding entitlement qua the entire compensation amount determined under the impugned award. Likewise, the oral admission occurring in the cross-examination of Suresh embodied in Ex.R-2 qua Devi Ram inducting, respondent No.3 as a "gair maurusi", is not amenable to a construction qua its affording any leverage to respondent No.3 to espouse qua vis-a-vis the entire share of Devi Ram in the undivided holding, his standing inducted as a tenant thereon by him, obviously when the aforesaid trite precise evidence in respect thereto stood enjoined to be adduced by respondent No.3, whereas, he omitted to adduce it. Contrarily, his abandoning to pursue his petition under Sections 30 and 31 of the Act also his accepting the mandate of Ex.RW2/B ensures the ensual of a clinching conclusion qua his hence portraying his acquiescence qua vis-a-vis only a part of the share of one Devi Ram in the relevant undivided holding, his holding the status of a "gair maurusi" under him, whereupon also he stands estopped to canvass qua the entire amount of compensation determined qua the acquired land(s), hence, standing disbursed in its entirety in his favour and to the complete ouster of other landowner(s).

6. For the foregoing reasons, the impugned award is modified to the extent, it has declared respondent No.3 to stand entitled to the entire amount of compensation determined under the impugned award. However, the

disbursement of amount of compensation, if any, earlier made vis-a-vis Chattar Singh (respondent No.3), under the relevant pronouncement(s) do not warrant any direction qua his standing dis-entitled to their benefit(s). The benefit of the impugned rendition shall also accrue to the appellants besides to respondent No.3 in the manner as concluded/drawn in the previous rendition(s), rendered with respect to the acquired land(s). Accordingly, the instant appeal stands disposed of. All other pending applications also stand disposed of.