

Tejdhari and ors. Vs. Baul and ors.

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Court : Allahabad

Decided On : Oct-30-1980

Reported in : AIR1981All47

Judge : K.C. Agrawal, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 30 and 53

Appeal No. : First Appeal No. 58 of 1973

Appellant : Tejdhari and ors.

Respondent : Baul and ors.

Advocate for Pet/Ap. : Namwar Singh, Adv.

Disposition : Appeal dismissed

Judgement :

K.C. Agrawal, J.

1. This appeal has been filed against a judgment of the First Additional District Judge, Varanasi, dated 1st Mar., 1973, declaring the claimants Second Set, i.e. 2 to 5, namely Ram Palat Singh, Ram Murti Singh, Ram Dhani Singh, and Gulab Singh, to be entitled to receive the amount of compensation awarded, Rs. 784.68 paise in question.

2. The facts, briefly stated, are these. Certain land of Khata No. 9 was acquired by the Land Acquisition Officer, Varanasi, for Moghlalir Tubewell Channel in village Attarsuiya. Pargana Qasba Raja, Tehsil and district Varanasi. The compensation awarded was prepared in the name of Baul Singh son of Nandan Singh, on the basis of Khasras and Khataunis. Subsequently, Rampalat Singh and others, who were claimant Second Set, appeared and made an application before the Special Land Acquisition Officer that they had purchased the acquired land in question, and, as such, were entitled to receive the compensation. Baul Singh was the claimant First Set. These two sets were heard. But, since they did not agree to the apportionment of the amount of compensation, or as to the person to whom the same was payable, the Collector made a reference under Section 18 of the Land Acquisition Act, to the District Judge.

3. Upon the reference being received, the claimants First Set, namely, Baul Singh, did not appear before the Additional District Judge. The claimants Second Set filed their claims to the compensation.

4. Before the Additional District Judge, the claimants Third Set preferred a claim setting up their right to receive compensation. The claimants Third Set had not preferred any objection to the Collector with respect to their right to receive compensation. The reference under Section 18 by the Collector was only in respect of the dispute between the claimants First Set and Second. The claimants Third Set had been impleaded by the Additional District Judge in the reference under Section 30 of the Land Acquisition Act.

5. Upon the pleadings, the issue framed was, as to who is entitled to receive the compensation awarded by the Land Acquisition Officer. The Addl. District Judge held the claimants Second Set to be entitled to get the same. He found that as the claimants First Set had neither appeared nor adduced evidence, he was not entitled to get compensation. The dispute before him was between claimants Second Set and Third Set. As regard the Third Set, they did not put forward any objection or claim before the Land Acquisition Officer. They did not make any application or claim before the Collector, Varanasi for being impleaded as parties to the proposed reference. They had made an application for being impleaded in

the reference under Section 30 of the Land Acquisition Act.

6. The question that arises for decision in this appeal, preferred by the claimants Third Set, was whether their claim for lifting compensation in the proceedings under Section 30 of the Land Acquisition Act, was entertainable. The learned Additional District Judge decided the said question against the claimants Third Set.

6A. Section 30 of the Land Acquisition Act reads as under :--

'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.'

7. The use of word 'refer' in Section 30 is indicative of the meaning that only that dispute which has been referred to by the Collector to the decision of the Court is capable of being adjudicated upon. Such dispute must have arisen as to the apportionment of the same or any part thereof before the Collector. If a party does not set up its right to receive compensation, Section 30 cannot be pressed in to service by him for getting his rights decided by moving the District Judge or the Court before which the matter is pending, for being impleaded as a party.

8. Counsel for the appellants, resting his submission on Section 53 of the Land Acquisition Act, urged that as the provisions of the Civil P. C. are not (sic) applicable to the proceedings under the Land Acquisition Act. The appellants had a right to be impleaded as parties, and once an order impleading them had been made, the Court was obliged to decide their rights. To my mind submission made is not tenable. Section 53 applies to provisions of the Civil P. C. only to the extent that it is not inconsistent with anything contained in this Act. The Scheme of the Act read as a whole would show that the Act does not contemplate for moving of an application for impleadment by a person who was not party before the Collector and to get his right decided under Section 30. Section 11 of the Land Acquisition Act required that the Collector shall enquire into the respective interests of the persons claiming the compensation, and shall make an award, which would be

final under Section 12 of the said Art, subject to the proceedings under Section 18. It is only when any dispute arises as to the levy of the compensation determined under Section 11 that the Collector is empowered under Section 30 to make a reference to the Court for its decision, it is the existence of a dispute as to the apportionment which obliges the Land Acquisition Officer to make a reference under Section 30 of the Act, The disputants must be before the Land Acquisition Officer, and once he makes a reference, the Civil Court has a right to decide the title only of those persons whose claims have been referred to by the Collector.

9. The above view was taken by the Calcutta High Court in Mahananda Rao v. Srish Chandra Tiwari, (1910) 7 Ind Cas 10 (Cal) and Probal Chandra Mukherjee v. Pyare Mohan Mukherjee, (1908) 12 Cal WN 987.

10. Counsel for the appellants relied on a decision taking the contrary view in Sakalbaso Kuer v. Brijendra Singh : AIR1967 Pat243 . As I find myself unable to share the opinion taken in this case, I am unable to follow it.

11. The distinction made between a question of apportionment of the compensation and a question as to which person is entitled to payment of compensation, will not, in my opinion, make any difference to the principle. Section 30 does not permit the Court seized with the reference to entertain a dispute and to adjudicate upon it. The power conferred on the Court under Section 30 is only in respect of a matter referred to by the Collector. It is not a Court of original jurisdiction entitled to entertain the dispute between the parties on its own. Its jurisdiction is confined to the matter referred. The view taken by me is supported by a decision of the Mysore High Court in Basaling-appa Gowda v. Nagamma (AIR 1969 Mys 313).

12. The next case, relied upon was Kishan Chand v. Jagannath Prasad, ((1903) ILR 25 All 133). This case is clearly distinguishable. In this case, there was a reference pending before the District Judge. In the reference an application was filed for being impleaded on the allegation that the applicant of that case had been in adverse possession of a portion of the property claimed by one of the parties to the reference. The District Judge entertained this application and proceeded to decide the reference. In the appeal, the judgment of the District Judge was

affirmed, Such a person cannot be considered to be an outsider like those of the appellants. A person applying for impleadment can claim his right only through the party, the right of which had been referred to by the Collector for decision to the Court. The case of a third person claiming right independently of the party whose dispute has been referred to by the Collector, stands on a footing different from one who seeks to be impleaded in place of or in substitution of the right of the party before the Collector. This distinction has been brought about by the Supreme Court in *Sunder Lal v. Paramsukhdas* : [1968]1SCR362 .

13. For what I have said above, I find myself in complete agreement with the view of the learned Additional District Judge that the claim of Third Set was not entertainable and was liable to be rejected on that ground. It is, therefore, not necessary for me to enter into the claim set up by this Set.

14. In the result, the appeal fails and is dismissed with costs.

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