

Hanuman Pershad Etc. Vs. Chuni Alias Chuni Lal and ors.

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Court : Delhi

Decided On : Aug-25-1977

Reported in : 13(1977)DLT226

Judge : Prakash Narain and; Avadh Behari Rohatgi, JJ.

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

Appeal No. : Regular First Appeal No. 82D of 1965

Appellant : Hanuman Pershad Etc.

Respondent : Chuni Alias Chuni Lal and ors.

Advocate for Pet/Ap. : Sultan,; Maehswar Dayal and; S.S. Dalal, Advs

Judgement :

Prakash Narain, J.

(1) This appeal is directed against the order of an Additional District Judge, Delhi, passed on April 12, 1965 apportioning compensation between Shri Hanuman Pershad and his sons Krishan Kumar and Anil Kumar on the one hand and Shri Chuni on the other. Shri Hanuman Pershad and his sons were the owners of the land whereas Shri Chuni claimed that he was a tenant.

(2) Land measuring 100 bighas 18 bids was in Village Rajpur Chhavani was notified for acquisition for Planned Development of Delhi. The notification under Section 4 of the [Land Acquisition Act, 1894](#) was issued on March 3, 1963. The declaration under Section 6 was published on May 29, 1963. The Land Acquisition Collector made his award on November 21, 1963. With regard to land comprised in Khasra No. 122 the compensation assessed by the Land Acquisition Collector was Rs. 13,381.40. Inasmuch as there was dispute between the owners of the land and the tenant as to apportionment, a reference was made under Sections 30 and 31 of the Land Acquisition Act to the District Judge for apportioning the compensation awarded. By the impugned order dated April 12, 1965 an Additional District Judge, Delhi, held that Shri Chuni, the tenant, was entitled to 80 per cent of the compensation while Shri Hanuman Pershad and his sons were entitled to only 20 per cent. Aggrieved by this order Shri Hanuman Pershad and others have appealed to this court.

(3) Before the Additional District Judge the contention of Shri Chuni was that prior to him his father and his mother had been tilling the land comprised in Khasra No. 122 and so, he was a tenant of long standing with certain rights in the land. Shri Hanuman Pershad and his sons, on the other hand, contended that Shri Chuni was merely a non-occupancy tenant with no rights in the land and so, not entitled to any share in the compensation. The learned Additional District Judge framed the following issue :-

WHETHER Chuni was a non-occupancy tenant of Khasra No. 122 at the time of acquisition. If so, to what share of the compensation is he entitled in respect of this khasra number ?

(4) Shri Chuni in support of his contention produced Jamabandi entries. Exhibits C.1 to C.5, showing that first his father was the tenant in occupation of land comprised in Khasra No. 122 and followed by his mother as non-occupancy tenant from the year 1934-35. The Jamabandi, Exhibit C.5, for the year 1950-51 showed that Mst. Nanno, the mother of Shri Chuni, was the cultivator in possession of this land as a non-occupancy tenant. Thereafter there are no jamabandis produced on the record but copies of Khasra Girdawris for the years 1955 to Kharif 1963 and

Rabi 1964 have been produced. These Khasra Girdawri entries Exhibits C.6 to C.8 and Exhibit C.10, show first Mst. Nanno as the cultivator in possession as non-occupancy tenant and later Shri Chuni. It was, accordingly, held by the Additional District Judge that Shri Chimi was a non-occupancy tenant of land comprised in Khasra No. 122 at the time of acquisition. With regard to apportionment of the compensation the Additional District Judge took note of the fact that keeping in view the average income of the produce from the land, the annual rent paid by Shri Chuni to Shri Hanuman Pershad and his sons as well as the nature of Shri Chuni's tenancy in view of the Delhi Urban Areas (Tenant Relief) Act, 1961, Shri Chuni was entitled to 80 per cent of the compensation.

(5) Mr. Sultan Singh, learned counsel for Shri Hanuman Pershad and his sons, urged that the impugned judgment of the Additional District Judge gives no reasoning whatsoever as to why Shri Chuni was held entitled to 80 per cent of the compensation awarded for acquisition of land comprised in Khasra No. 122. He contended that Shri Chuni having been held to be a non-occupancy tenant his rights in the land were no better than those of a tenant at will and so, he was not entitled to any share in the compensation. Mr. S. S. Dalal, learned counsel for Shri Chuni, on the other hand, contended that by virtue of the provisions of Delhi Urban Areas (Tenant Relief) Act, 1961, Shri Chuni's title or rights in the land become much better than those of a tenant at will and so, he has been rightly held to be entitled to 80 per cent of the compensation.

(6) Mr. Sultan Singh in support of his contention that Shri Chuni was not entitled to any share in the compensation as he was only a non-occupancy tenant relied on three decisions, namely, Rohan Lal v. Collector of Etah : AIR1929 All525 (1), Shiam Lal and others v. Collector of Agra : AIR1934 All239 and Laxmanrao Govindrao Deshnuikh v. Jagannath Tukaram Jijkar . A Division Bench of the Allahabad High Court in Rohan Lal's case held that as to the basis of apportionment of compensation between a landlord and an occupancy tenant the fair estimate is that in a rupee the landlord should have 10 annas share and the occupancy tenant 6 annas share. With respect we are unable to see what was the reasoning behind this decision. After examining what rights vest in an occupancy tenant, their Lordships observed that although a tenant may, for the time being,

make out of the land mor

'BUT when all is said, it remains still difficult to give a money value to the respective rights of the zamindar and the occupancy tenant. But howsoever we may decide, we have to assign somewhat arbitrary value to the two rights. Hing given the case our best consideration, we think that it is a fair estimate of the respective rights to say that, in a rupee, the landlord's share ought to be ten annas and the occupancy tenant's right six annas. We thus see that their Lordships really adopted a rough and ready rule and had not laid down any principle on which the respective rights of the owner and the tenant are to be evaluated. In Shiam Lal's case a Full Bench of the Allahabad High Court '

took the same view as in Rohan Lal's case, which was approved. The Full Bench observed,

'IT must, however, be clearly understood that this rough and ready rule is not accepted by me as any rule of law but merely as a rule of practice for the purpose of forming a rough estimate of the respective rights of the zamindar and the tenants, to be a guide only when both the parties have failed to adduce any definite evidence to show other considerations and circumstances, which would lead to a more satisfactory assessment of their respective rights.'

This decision is also, therefore, not helpful in laying down a rule of law. In Laxmanrao Govindrao Deshmukh's case a Single Judge of the Nagpur High Court observed that,

'THE ratio of apportionment between the landlord and tenant may be different in different cases and would depend on the particular facts admitted or proved'.

(7) None of the three decisions relied upon, therefore, gives any guideline for apportionment of compensation between a landlord owner and a statutory tenant. Furthermore, these were cases where the apportionment was to be made between the owner-landlord and occupancy tenants. Shri Chuni, admittedly, is not an occupancy tenant and for that reason also these decisions would not be very relevant.

(8) Mr. Dalal invited our attention to a decision of the Lahore High Court in *Ram Kishan and others v. Jati Ram and others*, A.I.R. 1931 Lah 649 . This was also a case of apportionment of compensation between occupancy tenants and their landlords. The ratio laid down in this case was between the Malikana paid by the landlord and the land revenue paid by the tenant. In our opinion, this decision also will not be of much help.

(9) We are neither concerned with an occupancy tenant nor with a non-occupancy tenant. We are concerned with a statutory tenant as envisaged by the Delhi Urban Areas (Tenant Relief) Act, 1961. 'Under this Act urban agricultural land was covered and tenants of such land were given protection against eviction in the same manner as tenants of buildings in urban areas were given protection by the rent control legislation. Section 3(1) of the aforesaid Act provides that after the commencement of the Act no person shall be liable be ejected from any land held by him as tenant except on one or more of the grounds stated therein. These grounds are that a decree for arrears of rent due in respect of the land remains unsatisfied after the expiry of the period allowed therefore; where rent is payable in kind, the tenant has without sufficient cause failed to cultivate the land; that the tenant has sub-let or otherwise transferred the whole or any part of the tenancy in contravention of any law for the time being in force or of any contract; and that the tenant had used the land in a manner which rendered it unfit for the purpose for which it was let. If any of the four conditions mentioned above did not exist, the tenant had a protected tenure over the land of which he was a tenant. This favorably compares with the rights of occupancy tenants under the Punjab Tenancy Act, 1887 though the rights are somewhat less. The statutory tenant thus created by the Delhi Urban Areas (Tenant Relief) Act, 1961 has a better tenure than a tenant at will or a mere non-occupancy tenant. It follows, therefore, that the tenant's interest in the land became substantial and if he did not fall within the mischief of clauses (a) to (d) of Section 3 (1) of the said Act he at least had a life tenure. Such was the nature of the right that Shri Chuni had at the time of the acquisition of the land in question.

(10) The property rights in land are a bundle of rights to use, sell, mortgage and exploit the land. When agricultural land is given to a tenant the owner gives to the

tenant the right to exploit the land and use the land. The owner may reserve unto himself the minerals under the land, if permissible under the law, and retains unto himself the right to sell or mortgage the land. If the owner exercises the right of sale or mortgage he would exercise that right subject to the right of the tenant to exploit or use the land. The purchaser or mortgagee in such a case would then step into the shoes of the owner and in his turn would only have such rights as are available to him minus the rights of the tenant. To our mind unless income is derived from the land, mere satisfaction of owning the land is the only other right which the owner has and it is difficult to translate that right in terms of money. All the same it is a valuable right.

(11) In case of statutory tenant or non-occupancy tenant the owner also has the right of reversion available to him as the right to use the land reverts to him on the eviction of the tenant or on the tenancy coming to an end. In the case of statutory tenancy such right of reversion stands postponed to at least the life-time of the statutory tenant or unless one of the contingencies mentioned in clauses (a) to (d) of Section 3(1) occur. As far as apportionment of compensation between occupancy tenants and land-owners is concerned, the ratio adopted by judicial decisions is to give to the tenant from 36 per cent to 80 per cent and the balance to the owner. We have already observed that the rights of the statutory tenant are somewhat less than an occupancy tenant. thereforee, in our view depending upon the circumstances of a case, compensation awarded may even be apportioned half and half.

(12) It was urged that a ratio could be worked out between the income of the land to the owner from the tenant, namely, the Malikana or the rent and the income of the tenant. In our opinion, this will not be a safe guide because sometimes the Malikana is very much less in old tenancies and in these days of scientific cultivation the produce of land may fetch much more than the rent that has been agreed upon between the owner and the tenant. Capitalisation of the rent received by an owner may be one of the ways of fixing the compensation to be paid for acquisition and in determining the market value of the land but that does not help in apportionment of compensation or market value determined by the Land Acquisition Collector or enhancement awarded by the District Judge or the High

Court. What is to be found out is the value of the tenancy rights.

(13) In the present case Shri Chuni and before him his mother and before that his father have been non-occupancy tenants of the land in question and have been cultivating it. It is established on the record that this family had been cultivating this land since 1934-35. Had the acquisition taken place after the lifetime of Shri Chuni when his son was cultivating the land, that son would have had the same rights as occupancy tenant within the meaning of Section 3 of the Punjab Tenancy Act. The land had been in cultivating possession of Shri Chuni's family for almost 30 years when it was notified for acquisition. A cultivator gets attached to his land, and particularly when he has been in cultivating possession of it for such a long time. Furthermore the tenure of Shri Chuni stood protected by virtue of the Delhi Urban Areas (Tenant Relief) Act, 1961 and but for the intervention of the notification acquiring the land he may well have continued to cultivate it all through his life. Shri Hanuman Pershad and his sons were getting a return of only Rs. 25 per year as rent from Shri Chuni and no evidence was led by Shri Hanuman Pershad etc. regarding their intention to exercise any other ownership rights than that of receiving rent.

(14) Keeping in view the rights of the tiller of the soil, which are now protected, and the rights of the owner-landlord which in the case of a statutory tenant are considerably restricted, the tenant in apportionment proceedings would be entitled to a major portion of the compensation determined by the Land Acquisition Collector. As has been observed by us earlier, occupancy tenant has been awarded as much as 80 per cent of the compensation in apportionment proceedings. Having held that the right of a statutory tenant is somewhat less than that of an occupancy tenant, a fair estimate of share in the compensation for a statutory tenant would be 65 per cent.

(15) As we have noticed, the Additional District Judge had given 80 per cent of the compensation to the tenant. Such apportionment cannot be upheld because the Additional District Judge has equated a statutory tenant to an occupancy tenant despite coming to the conclusion that Shri Chuni was a non-occupancy tenant. We, therefore, accept the appeal and fix the apportionment between Shri

Hanuman Pershad and his sons, on the one hand, and Shri Chuni, on the other, at respectively 35 per cent and 65 per cent. The compensation of Rs. 13,381.40 be divided accordingly. In the circumstances of the case we leave the parties to bear their respective costs in this court.

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