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Court : Delhi

Decided On : May-09-2012

Judge : Sunil Gaur

Appeal No. : RFA NO. 31 OF 1987 & C.M. NO. 5876 OF 2009

Appellant : Kure

Respondent : Union of India and Others

Judgement :

ORDER

1. Reference petition under Section 30 and 31 of the Land Acquisition Act seeking compensation granted in pursuance to Award No. 36 of the of the year 1981-82 in respect of acquired land measuring 31 bighas 4 biswas, situated in Village-Badli, Delhi has been answered vide impugned judgment of 24th December, 1986 whereby compensation amount in respect of 9 bighas and 2 biswas of land has been awarded to respondent- Jai Singh, who was I.P. No. 1 before the Reference Court and compensation amount in respect of the acquired land i.e. 8 bighas and 6 biswas has been granted to the appellant herein, who was IP No. 2 before the Reference Court.

2. The challenge to the impugned order in this appeal is on the ground that the Reference Court ignores the revenue record i.e. Ex.K-IX and Ex.K-X which clearly shows that the appellant was the tenant during pre-consolidation period on the

land measuring 142 bighas and 18 biswas under respondent No.2 and his brother Dilip Singh and bhumidari rights were conferred upon the appellant in respect of 31 bighas and 4 biswas of the subject land, which stands substantiated by the revenue entries Ex.K-11 of the year 1976-77.

3. Attention of this Court was drawn to the order of Division Bench of this Court in LA.APP No.55-56 of 2006, Raj Singh Vs. Union of India, rendered on 14th November, 2008 wherein legal position in respect of the proceedings under Section 30 and 31 of the Land Acquisition Act has been reiterated. That is to say, the status of the occupants of the acquired land at the time of the acquisition has to be seen.

4. It was pointed out by appellant's Counsel that respondent-Jai Singh in his evidence has admitted that the possession of the acquired land in question i.e. 31 bighas and 4 biswas was taken from appellant-Kure Ram and that the evidence of Ram Chander s/o Deep Chand supporting the case of the respondent regarding pre-consolidation holdings is of no relevance. Reliance was placed upon decisions in M/s.Sikri Brothers vs. Union of India etc., 1973 RLR (Note) 57; Maya Devi vs. Om Prakash, 1988(2) RRR 324; Kora Ram vs. Prabhu, 1985 RRR 5; by learned counsel for the appellant to contend that the Reference Court has no jurisdiction to examine the validity or otherwise of the allotment of the subject land to the appellant in lieu of pre-consolidation holding in view of the bar contained in Section 44 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

5. It was vehemently contended by learned counsel for the appellant that in view of the decision in LA. App. No. 102/2007, titled as Gaon Sabha vs. Fateh Singh, rendered on 28th August, 2008; in LA. App. No. 153/2007 titled as Attar Singh vs. Gaon Sabha, rendered on 5th December, 2008; **Rama Shankar vs. Mukhtiyare**, 2007 (98) DRJ 517 (DB), the Reference Court cannot declare a person as Bhumidhar and the compensation amount has to be paid on the basis of the existing status of the claimant at the time of making of the Award and since appellant was the Bhumidhar of the entire acquired subject land measuring 31 bighas 4 Biswas and was in possession thereof, therefore the entire compensation

amount deposited ought to have been granted to the appellant.

6. Ultimately, it was urged by appellant's counsel that impugned judgment diluting the bhumidari rights of the appellant is not sustainable in view of decision of Division Bench of this Court in Raj Singh (Supra) and therefore, the impugned judgment deserves to be set aside and claim petition of the appellants be allowed.

7. Though counsel for the contesting respondents has not come forward to defend the impugned judgment but Mr. S.K. Pathak, learned counsel for first respondent, has ably assisted this Court in going through the evidence on record and had pointed out that the impugned judgment is based upon the deposition of an independent witness Ram Chander s/o Deep Chand who has disclosed the pre-consolidation status of the subject land and in view thereof, the appellant cannot rely upon the revenue record (Ex.K-11), as the order granting bhumidari rights is not on record and for the reason that the appellant is unable to explain as to how the appellant had started cultivating 25 bighas of subject land out of the subject land whereas during the pre-consolidation period he was just having 10 bighas of subject land.

8. I have considered the afore-noted submissions in the light of evidence on record, and I find that before deciding this appeal, the application for additional evidence, which was filed along with this appeal is to be dealt first.

9. Additional evidence sought to be led in respect of a compromise stated to have been arrived at between Nanak Chand (father of the appellant) and the respondent. It is not the case of the appellants in the instant application that they were not aware of the said compromise. The reason furnished for not leading evidence before the Reference Court is as under:-

“That at the time when the appellant was leading evidence in the Reference Court, the appellant was not having the certified copies of the statement made by Sh.Nanak during the consolidation proceedings where upon as a result of the compromise in between Nanak and Kure, the aforesaid entire disputed land was given to Sh.Kure and was given possession to him as non-occupancy tenant under Sh.Nanak in lieu of his pre-consolidation holdings.”

10. Learned counsel for the appellant/applicant had relied upon decisions in K.Venkataramiah vs. A.Seetharama Reddy and others, AIR 1963 SC 1526; Billa Jagan Mohanreddy vs. Billa Sanjeeva Reddy, 1994 (2) RRR 456 (SC); and Akash Ganga Builders and Engineers Pvt. Ltd. vs. G.P.Seth, HUF and another, AIR 1999 Delhi 362, to contend that the Appellate Court should not reject additional evidence merely on the ground that it was not produced earlier and for just disposal of the appeal, the additional evidence led by way of certified copies of the proceedings before the consolidation authorities indicating recording of compromise ought to be taken on record as the compromise arrived at between the parties way back in July, 1954 cannot be disputed in subsequent proceedings in view of the dictum of the Apex Court decisions in Sailendra Narayan Bhanja Deo vs. The State of Orissa, AIR 1956 SC 346 and Salkia Businessmen's Association and others vs. Howrah Municipal Corporation and others, AIR 2001 SC 2790. Thus, while relying upon decisions in Ranganayakamma and Anr vs. K.S.Prakash (D) by LRs and Ors., AIR 2009 SC (Supp)1218; Biswanath Rana and others vs. Laxman Rana and another, AIR 1971 Orissa 267; it was contended that the additional evidence comprising of an application of 17th April, 1954 and the statements recorded in support thereof and the compromise of 21st July, 1954 arrived at between the parties, deserves to be acted upon.

11. Evidence beyond pleadings cannot be looked into. A bare perusal of the claim petition as well evidence led shows that there is no whisper of the aforesaid compromise in the claim petition or in the evidence led. Though no case for leading additional evidence is made out by the applicant/appellant but still, even if the additional evidence sought to be led is taken into consideration, it will not help this Court in any manner in a just disposal of this appeal, as the so-called compromise of 21st July, 1954 said to have been arrived at between the parties, does not indicate as to what kind of compromise it is and in what context, it had been arrived at. The so-called compromise of 21st July, 1954 in respect of which additional evidence is sought to be led, reads as under:-

“Sir,

Today in the presence of advisory committee the owner of the land Sh.Nanak Ram and non-occupancy tenant Sh.Kure, s/o Sh. Kanha have compromised in between them as per compromise Khasra No.36/14-17-18-19-20-21-22-23-24 total measuring 43-4 Nehri given on account of non-occupancy tenancy and the compromise has been got done. Both the parties have agreed and admits the same.

Signatures of both the parties are there. The application be accordingly filed/consigned.

21-7-54

Sd/-Kanungo”

12. Applying the ratio of the decisions cited, this Court is of the considered opinion that the aforesaid additional evidence sought to be led, deserves to be excluded from consideration. Strong reliance placed by appellant's counsel upon the civil court decision (Ex.K-1), is of no avail as against the civil court's decision (Ex.K-1), further appeal was preferred by respondent-Jai Singh, which was disposed of by this Court vide order (Ex.K-3) holding that in view of the decision of the Apex Court in **Hatti vs. Sunder Singh**, AIR 1971 SC 320, the proceedings before the civil court were not maintainable. However, Jai Singh was left to avail of the remedies available under the law.

13. It is the decision of 7th April, 1962 of the Additional District Judge (Ex.PW-3/1), which clinches the issue of bhumidari rights. Respondent-Jai Singh had challenged grant of bhumidari rights to appellant herein and vide aforesaid decision (Ex.PW-3/1), it was held that the declaration of the bhumidari rights by the Revenue Assistant is ultra-virus.

14. In the face of the afore-noted decision, (Ex.PW-3/1) appellant cannot claim the entire compensation by staking his claim of being a Bhumidhar of the subject land. Thus, by simply relying upon the revenue record (Ex. K-11) the appellant cannot stake its claim to the acquired land of 31 bighas and 4 biswas as the independent witness - Ram Chander S/o Deep Chand, has categorically stated in his evidence

that appellants used to cultivate 10 bighas of land and even after the consolidation, he was given 10 bighas of land for cultivation. It has also come in the evidence of the aforesaid independent witness - Ram Chander s/o. Deep Chand, that after consolidation, appellant had started cultivating 25 bighas of land over and above 10 bighas of land which he was already cultivating before consolidation.

15. In the light of the aforesaid reliable evidence on record, the Reference Court was well within its rights to apportion the compensation, as has been done in the impugned judgment and merely on the basis of the revenue entry (Ex.K-11), the compensation for the entire land of 31 bighas and 4 biswas could not have been granted to the appellant. The finding in the impugned judgment of there being no evidence that the entire land of 31 bighas and 4 Biswas was allotted to the appellant by the consolidation authorities remains unassailable.

16. In the aforesaid view of this matter, finding no fault with the impugned judgment of the Reference Court, this appeal and the pending application stands dismissed with no orders as to costs.

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