

Ibrahim And Others vs State Of Haryana And Others on 26 April, 2011

Author: M.M.S. Bedi

Bench: M.M.S.Bedi

RSA No.665 of 2008

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Decided on: April 26, 2011.

(1)

RSA No.665 of 2008.

Ibrahim and others.

.. Appellants

VERSUS

State of Haryana and others.

.. Respondents

(2)

RSA No.1078 of 2008.

Abdul Razak.

.. Appellant

VERSUS

State of Haryana and others.

.. Respondents

CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI

1. Whether reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporter?
3. Whether the judgment should be reported in the Digest?

... 1

RSA No.665 of 2008

PRESENT Mr.Vikas Kumar, Advocate,
for the appellants.

Mr.Deepak Girhotra, DAG., Haryana,
for the respondents.

Mr.Sandeep Punchhi, Advocate,
for the Punjab Wakf Board.

M.M.S. BEDI, J.

This order shall dispose of the above noted two regular second appeals as common question of law is involved. The facts are taken from RSA No.665 of 2008.

The plaintiffs have filed these second appeals against the judgments and decrees passed by the Additional Civil Judge (Sr. Divn.), Faridabad, dated 13.09.2007, and judgments and decrees dated 01.02.2008, passed in appeal by the Additional District Judge, Faridabad, dismissing the suits for declaration and permanent injunction filed by the plaintiffs-appellants.

The plaintiffs sought a declaration that the demand raised by defendant-respondent No.2, the Land Acquisition Collector, Faridabad, for recovery of amount of compensation received by the plaintiffs-appellants for ` 1,00,191.50 paise is illegal and that the defendants are not entitled to recover the same from the plaintiffs as compensation had been released to the plaintiffs in accordance with law being Gair Marusi after verifying the revenue entries. A decree for permanent injunction with consequential relief was also sought for by the plaintiffs to restrain the defendants-respondents from recovering the above said amount on the basis of ... 2 notice dated 31.01.2001, forcibly and illegally as arrears of land revenue by adopting coercive means of arrest and detention. It is an admitted fact that the land acquired by the defendants vested in the Punjab Wakf Board and Abdul Sattar, the predecessor-in-interest of the plaintiffs was in possession of the land owned by defendant- respondent No.3, the Punjab Wakf Board. The Land Acquisition Collector had disbursed 80 per cent of the compensation to the predecessor-in-interest and 20 per cent compensation was awarded to the Punjab Wakf Board, being the owner. Subsequently, the collector had issued notice dated 31.01.2001, for recovery of compensation of the land, claiming that the same had been

illegally obtained by the plaintiffs. The defendants claim that the plaintiffs had got the compensation amount released from the Collector by misleading the facts by filing false affidavit and by concealing and suppressing the true facts. The FIR was also registered against the said persons. It was claimed that the plaintiffs had no right to claim any amount of compensation as they were neither owners nor tenants over the suit property.

The Courts below had framed a material issue No.1, as follows:

"Whether the plaintiffs are entitled to permanent injunction against the defendants on ground as alleged?OPP"

The plaintiff Ibrahim appeared as PW.1 to state that the land in dispute had been in possession of the plaintiffs as Gair ... 3 Marusi under the Punjab Wakf Board, after the death of their father who had been in cultivating possession of the suit land. The plaintiffs had received the amount of compensation being in possession of the property under the Punjab Wakf Board. The defendants produced DW.1 Datta Ram who placed on record two judgments EX.D2 passed by the Civil Judge (Sr.Divn.), Faridabad, by virtue of which suit of the plaintiff for permanent injunction was dismissed and EX.D3 passed by the Addl. District Judge, Faridabad, by virtue of which appeal against the order passed by the Civil Judge (Sr.Divn.,) Faridabad, was dismissed. It was established on record that the plaintiffs had received the compensation under the Land Acquisition Act (for short the Act). The Courts below have given a finding to the effect that the plaintiffs had obtained the amount of compensation from defendant-respondent No.2, Collector by misleading and by filing false affidavit that they were in possession of the suit land as owner and that they had given an indemnity bond EX.D2, vide which they had undertaken to return the amount in question as and when demanded by the Court or the Government. In view of the said circumstances, it was held that the State is entitled to recover the amount from the plaintiffs.

After taking into consideration all the facts and circumstances of the case, the following substantial question of law has arisen for adjudication: -

"Whether the plaintiffs who have been awarded compensation being interested persons under Section 9 of the Act, as tenants of Wakf ... 4 Board, to the extent of 80 per cent after consideration under Sections 29 & 30 of the Act, and whether all the proceedings done under the Act in accordance with law could be set at naught without giving any notice to the plaintiffs as per Section 52 of the Act?"

The learned counsel for the plaintiffs-appellants has vehemently contended that the defendants-respondents have been adopting coercive means to recover the amount of compensation which had been granted to the plaintiffs-appellants on the basis of their possession over the acquired land. The plaintiffs-appellants had not played any fraud with the Government. Father of plaintiffs- appellants Abdul Sattar, remained in possession of the suit land as Gair Marusi for about

50 years regularly and uninterruptedly. He was never ejected from the suit land during his lifetime. He died on 21.03.1994. Thereafter, mutation of inheritance No.8243 dated 21.07.1994, was sanctioned in favour of the plaintiffs-appellants who inherited the suit property as Gair Marusi being in actual cultivating physical possession of the suit land. Reliance was placed on jamabandi for the year 1997-98 EX.P.1, showing the possession of the plaintiffs-appellants over the suit land as Gair Marusi. After acquisition of the suit land, the proceedings regarding apportionment of compensation had taken place before the Land Acquisition Officer.

Notice had been issued to the plaintiffs-appellants by the Land Acquisition Collector during proceedings by determining ... 5 the amount of compensation and apportionment made thereof. The Land Acquisition Collector, defendant No.2, had awarded 80 per cent compensation of the land to the plaintiffs-appellants being in actual physical possession of the land as Gair Marusi on the date of acquisition and 20 per cent compensation was awarded to the Punjab Wakf Board being the owner of the land. As the amount of compensation was disbursed by the Land Acquisition Collector, under Section 11, after apportionment, it has wrongly been held by the Courts below that there was any misrepresentation or fraud by the plaintiffs-appellants while receiving the apportionment amount of compensation. So far as the status of the plaintiffs-appellants is concerned, they are entitled to notice under Section 9 of the Act being occupier of the land. It is immaterial whether the status of the plaintiffs-appellants was that of a tenant or trespasser but the fact remains that the possession of the plaintiffs-appellants had been shown as Gair Marusi vide EX.P1, Jamabandi for the year 1997-98. The Collector is required to hold an enquiry and consider the claim of all the persons interested under Section 9 of the Act and pass an Award. The act of Collector in issuance of a notice to all the interested persons under Section 9 of the Act and determination of statements under Section 10 and an enquiry under Section 11 of the Act, are the official acts which are performed in the ordinary course of business. Section 29 of the Act, provides that where there are other persons interested such persons can agree in the apportionment of the compensation and the particulars of such ... 6 apportionment are required to be specified in the award. The award shall be conclusive evidence of the apportionment and if there is any dispute regarding apportionment at the time of settlement of compensation, the Collector may refer such dispute to the decision of the Court. All the official acts done in pursuance of the provisions of the Act, are protected under Section 52 of the Act, which lays down that no suit or other proceeding can be initiated against any person for anything done in pursuance of the Act, without giving to such person, a month's notice in writing of the intended proceedings. In the present case, the statement of the plaintiffs-appellants for compensation of apportionment has been considered by the Collector. There is no dispute regarding the entitlement of a tenant of Wakf Board to be compensated in the Act. In *Colonel Sir Harinder Singh Brar Vs. Bihari Lal*, AIR 1994 SC 2564 and *Inder Prashad Vs. Union of India*, (1994) 5, SCC 239, it has been held that the tenants are entitled to 3/4th of the compensation while the landlord is entitled to 1/4th of the compensation. An order passed by the High Court granting 3/4th compensation to tenants of Wakf Board and 1/4th compensation to the owner Wakf Board has been held to be valid in case *Mangat Ram etc. Vs. State of Haryana*, AIR 1996 SC 3347. There is no dispute that the plaintiffs-appellants were recorded as Gair Marusi occupants. Their statutory right for a notice under Section 9 (3) of the Act, cannot be disputed in view of the settled principle of law in case *Rajinderjit and others Vs. State of Punjab* and another, 1987 (1) PLR, 658 and *Karnail Singh ... 7 Vs. Jagir Singh*, AIR 1984 294 (P&H). Since all the statutory provisions had been followed while

determining the claim of the plaintiffs-appellants who are admittedly interested in the land under Section 9 (3) of the Act, it cannot be said that any fraud has been played by them in recovering the amount. It is a different matter whether their occupancy rights had matured into ownership or they were in the capacity as Gair Marusi occupants when the land was acquired. Both the Courts below have held that vide judgment EX.D2 & EX.D3, the appellants have been held to be trespassers in the property.

I have gone through the said judgments with the assistance of counsel for both the parties. Abdul Sattar, father of plaintiffs-appellants and Abdul Razzak had filed suit against the Punjab Wakf Board for a declaration that Mutation dated 02.06.1978, in favour of Punjab Wakf Board regarding land measuring 50 kanals 2 marlas was null and void. An issue was framed whether the plaintiffs-appellants were owners in possession of the suit land. The Civil Court had dismissed the suit merely on the ground that the suit was barred by limitation. The claim of the plaintiffs-appellants that they were owners of the land by adverse possession was declined. Possession of all the plaintiffs-appellants over part of the land was held to be that of tenants.

In view of above discussion, the questions of law framed in this case for adjudication has to be answered in favour of the plaintiffs-appellants by holding that amount of compensation to ... 8 the extent of 80 per cent released to the plaintiffs-appellants on the basis of their established possession by the Collector in the exercise of powers under Section 11 read with Section 30, cannot be held to be an act of fraud. In case any amount is held to have been wrongly disbursed to the plaintiffs-appellants, the same can be recovered only by due process of law by issuing a notice under Section 52 of the Act, which has not been done in the present case. Hon'ble the Apex Court in case Dr.G.H.Grant Vs. The State of Bihar, AIR 1966 SC 237, has laid down that there is no limitation prescribed for any reference under Section 30 of the Act. The relevant portion of said judgment read as follows: -

"The Collector is not authorised finally to decide the conflicting right of the persons interested in the amount of compensation: his primary concern is with the acquisition of the land. It is true that while determining the amount of compensation which may be offered, he has to apportion the amount of compensation between the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether they have appeared before him or not. But the apportionment by him does not determine finally the rights of the persons interested in the amount of compensation: his award is only conclusive between the Collector and the persons interested and not among the persons interested. The Collector has no power to adjudicate finally upon the title to compensation:

that dispute has to be decided either in a reference under S.18 or under S.30 or in a separate suit.

... 9 Consequently, the payments of compensation under S.31 to the person declared by the award to be entitled thereto discharges the State of its liability to pay compensation (subject to any modification by the Court), leaving it open to the

claimant to compensation to agitate his right, though devolved on him after the award in a reference under S.30 or by a separate suit."

In view of above said observations of Hon'ble the Apex Court, the steps taken by the defendants-respondents for recovery of the amount of compensation paid as arrears of land revenue without issuance of notice and without making a reference under Section 30 or by a separate suit cannot be said to be valid. The Collector is required either to refer the dispute in a reference under Section 18 or under Section 30 of the Act or to recover the amount by a separate suit. In view of above discussion, the judgments passed by the Courts below are set aside and the suits of the plaintiffs-appellants are decreed and the action of the defendants-respondents for recovery of the compensation paid to the plaintiffs-appellants is held to be bad. The appeal is allowed without prejudice to the rights of the Collector to recover the amount by adopting due process of law and by establishing that the plaintiffs- appellants in the capacity as tenants of the Wakf Board were not entitled to any amount of compensation.

(M.M.S.BEDI) JUDGE April 26, 2011.

. . . 10 rka . . . 11