

1984 PLRonline 0004

PUNJAB AND HARYANA HIGH COURT

Before: Justice R.N. Mittal and M.M. Punchhi, JJ.

KARNAIL SINGH - Petitioner

Versus

JAGIR SINGH - Respondent

Civil Revision No. 817 of 1982

(i) Land Acquisition Act, 1894 (1 of 1894), Section 31(2), Third proviso - Sections 18, 30 - Dispute among claimants - Jurisdiction of Civil Court - Award by Collector - Effect of - Held, scheme of apportionment by Collector does not finally determine the rights of persons interested in amount of compensation - Award is only conclusive between Collector and persons interested and not among persons interested in the land - Collector has no power to finally adjudicate upon title to compensation - That dispute has to be decided either in reference under Section 18 or under Section 30 or in a separate suit - Payment of compensation under Section 31 to person declared by award to be entitled thereto discharges State of its liability to pay compensation, leaving it open to claimant to compensation to agitate his right in reference under Section 30 or by separate suit - In case of dispute regarding compensation between different claimants, the persons interested can get their dispute resolved either by asking Collector to make a reference under Section 18 or by a separate suit - Claimant can file a civil suit - Jurisdiction of Civil Court to entertain suit is not barred. [Para 4, 5, 8]

“Section 31 has been interpreted by the Supreme Court in *Dr. G.H. Grant v. The State of Bihar*, AIR 1966 Supreme Court 237. J.C. Shah, J., speaking for the majority, observed... the scheme of apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation; the award is only conclusive between the Collector and the persons interested and not among the persons interested. The Collector has no power to finally adjudicate upon the title to compensation; that dispute has to be decided either in a reference under section 18 or under section 30 or in a separate suit. Payment of compensation, therefore, under section 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 in a reference under section 30 or by a separate suit.” [Para 5]

(ii) Land Acquisition Act, 1894 (1 of 1894), Section 9, 12(2), 18 - Dispute among claimants - No notice served under Section 9 - Civil suit - Maintainability of - Held, where a person was not served with notice under Section 9 of the Act and for that reason failed to refer his claim or objection before Collector and on whom there was no notice served under Section 12(2) of the Act and for that

reason failed to apply for reference within statutory period mentioned in Section 18, it could not be said that special remedy under Act being thus lost, such person could not seek his remedy in ordinary Court of law - In order to determine jurisdiction of Court, pleas in plaint are generally taken into consideration - Plaintiff stated that he did not receive any notice from Collector regarding land in dispute and did not come to know that it had been acquired - Civil suit is maintainable. [Para 7]

“In *Birendra Nath Banerjee’s* case (supra), the learned Bench also observed that where a person was not served with a notice under section 9 of the Act and for that reason failed to refer his claim or objection before the Collector and on whom there was no notice served under section 12(2) of the Act and for that reason failed to apply for a reference within the statutory period mentioned in section 18, it could not be said that the special remedy under the Act being thus lost, such a person could not seek his remedy in the ordinary Court of law.” [Para 7]

FACTS:

The plaintiff-respondent and defendant-petitioner were real brothers having joint land in Patti Mehar. In 1977, parties partitioned the joint holding by family settlement and mutation of partition was sanctioned on 03.01.1978. In partition, Khasra No. 860 was divided into three parts and plaintiff was allotted Khasra No. 860/3 measuring 10 Marlas. The State of Haryana acquired land measuring 1.69 acres under Land Acquisition Act for public purpose, which included land in dispute. However, no notice under Section 9 of the Act nor any notice after announcement of award was given to plaintiff. Plaintiff remained under impression that said Khasra numbers had not been acquired. The defendant came to know about acquisition and withdrew sum of Rs. 1,955/- awarded as compensation concealing factum of partition. Defendant also moved application for enhancement of compensation under Section 18 of the Act and compensation was enhanced by Rs. 20,635/- which was deposited in Court of Additional District Judge, Ambala. Plaintiff filed suit for recovery of Rs. 1,955/- and for declaration that he is entitled to sum of Rs. 20,635/-. Defendant contested suit pleading that civil Court had no jurisdiction to try it. Trial Court held that civil Court had jurisdiction. Defendant filed revision petition challenging this finding.

Cases Referred to:

1. ILR 7 Calcutta 388 (Privy Council), *Raja Nilmoni Singh Deo Bahadur v. Ram Bandhu Rai*, matter had been taken cognizance by Court under Land Acquisition Act, thereafter matter could not be taken cognizance of by civil Court; distinguishable. [Para 6]
2. 17 Ind. Cas. 684, *Amolak Shah v. Charan Das*, matter referred at instance of interested parties to Court under Section 18 of Act, thereafter suit filed; held to be barred; if interested parties once resort to remedy under Act, they cannot file civil suit thereafter; distinguishable. [Para 6]
3. AIR 1962 Calcutta 275, *Birendra Nath Banerjee v. Mritunjoy Roy*, held that where person not served with notice under Section 9 and failed to refer claim before

Collector and no notice under Section 12(2) and failed to apply for reference within statutory period, special remedy under Act being lost, such person can seek remedy in ordinary Court. [Para 7]

4. 1982 P.L.J. 80, *Chiranji Lal v. Ram Dutt*, observed by way of obiter dicta that when specific remedy provided under particular statute, jurisdiction of Civil Court to entertain suit is impliedly barred; view not agreed with and overruled. [Para 8]
5. AIR 1966 Supreme Court 237, *Dr. G.H. Grant v. State of Bihar*, held that award is conclusive between Collector and persons interested but not among persons interested; Collector has no power to finally adjudicate upon title to compensation; dispute to be decided in reference under Section 18 or Section 30 or in separate suit. [Para 5]
6. AIR 1941 Calcutta 635, *Hemanta Kumar Banerjee v. Satish Chandra Banerjee*, persons interested can get dispute resolved by asking Collector to make reference under Section 18 or by separate suit. [Para 5]
7. AIR 1958 Madhya Pradesh 339, *Hitkarini Sabha v. Jabalpur Corporation*, same view as above. [Para 5]
8. AIR 1962 Bombay 214, *Shri Deo Sansthan Chinchwad v. Chintaman Dharnidhar Deo*, same view as above. [Para 5]
9. 1978 P.L.R. 258, *Jog Raj v. Benarsi Dass alias Bans Gopal*, held that suit is maintainable for recovery of amount under proviso to Section 31(2) of Act. [Para 5]
10. AIR 1932 Allahabad 460, *Mt. Duiji Kunwar v. Mt Baila Kanwar*, held that to ascertain jurisdiction Court should regard allegations in plaint. [Para 7]

Mr. R.S. Bindra, Senior Advocate with Mr. Anil Sud, Advocate for the Petitioner.

Mr. N.K. Sodhi, Advocate for the Respondent.

R.N. MITTAL, J. - (17-01-1984) - This is a revision petition by the defendant against the order of the Subordinate Judge Illrd Class, Ambala City, dated 25th February, 1982.

2. Briefly, the case of the plaintiff is that the defendant was his real brother. They had joint land in Patti Mehar. In 1977, the parties partitioned the joint holding by way of family settlement and mutation of partition was duly sanctioned by the Revenue Officer on 3rd January, 1978. In the partition proceedings, Khasra No. 860 was divided into three parts and the plaintiff was allotted Khasra No. 860/3, measuring 10 Marlas. The State of Haryana acquired land measuring 1.69 acres under the Land Acquisition Act (hereinafter called the Act) for a public purpose, which included the land in dispute. It, however, did not give any notice under section 9 of the Act, nor it gave any notice after announcement of the award to the plaintiff. He, therefore, it is alleged, remained under an impression that the said Khasra numbers had not been acquired. The defendant came to know about the acquisition and he withdrew the sum of Rs. 1,955/- awarded as the amount of compensation concealing the factum of partition between the parties. The defendant also moved an application for enhancement of the compensation under section 18 of the Act on the basis of which the compensation was enhanced by an amount of Rs. 20,635/-. The amount has been deposited by the State in the Court of the Additional District Judge, Ambala. Consequently, the plaintiff filed a suit for recovery of Rs. 1,955/- on account of

compensation awarded by the Collector regarding the said Khasra number and for declaration to the effect that he is entitled to the sum of Rs. 20,635/- lying in deposit in the Court of the Additional District Judge, Ambala.

The defendant contested the suit and inter alia pleaded that the civil Court had no jurisdiction to try it. On the aforesaid pleading, the trial Court framed the following issue :-

Issue No. 4 :- Whether the civil Court has no jurisdiction to try and entertain the present suit ?

The issue was treated as a preliminary issue and the Court held that the civil Court had the jurisdiction to try the suit. The defendant came up in revision to this Court. At the time of motion hearing, it was admitted to D.B. That is how the case is before us.

3. It is contended by Mr. Bindra that a machinery has been provided in the Act to resolve the disputes regarding compensation between different claimants. He further submits that if a dispute arises, the party has to proceed in accordance with the provisions of the Act and it cannot file a civil suit. In support of his contention, he relies on Raja Nilmoni Singh Deo Bahadur v. Ram Bandhu Rai and others, ILR 7 Calcutta 388, (Privy Council), Amolak Shah and others v Charan Das and others, 17 Ind. Cas. 684, Birendra Nath Banerjee and others v. Mritunjoy Roy and others, AIR 1962 Calcutta 275 and Chiranji Lal v. Ram Dutt and others, 1982 P.L.J. 80.

4. I have given due consideration to the argument but regret my inability to accept it. In order to determine the question, it will be advantageous to refer to section 18, 30 and 31 of the Act. Under section 18, an interested person, who does not accept the award, can get the matter referred to a principal civil Court of original jurisdiction. Under section 30, the Collector is empowered to make a reference suo motu to the Court for decision as to whom the compensation is payable. Under sub-section (1) of Section 31, the Collector, on making an award, is required to tender payment of the compensation awarded by him to the persons entitled thereto in accordance with the award and to pay it to them unless prevented by some of the contingencies mentioned in sub-section (2). The present case involves interpretation of sub-section (2) and its third proviso which are reproduced below :-

“31. Payment of compensation or deposit of same in Court. –

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted.

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.”

5. Section 31 has been interpreted by the Supreme Court in Dr. G.H. Grant v. The State of Bihar, AIR 1966 Supreme Court 237. J.C. Shah, J., speaking for the majority, observed as

follows :-

“In determining the amount of compensation which may be offered, he has, it is true, 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 or not they have appeared before him. But the scheme of apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation; the award is only conclusive between the Collector and the persons interested and not among the persons interested. The Collector has no power to finally adjudicate upon the title to compensation; that dispute has to be decided either in a reference under section 18 or under section 30 or in a separate suit. Payment of compensation, therefore, under section 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 in a reference under section 30 or by a separate suit.”

From the above observations, it is clear that the award is final so far as the Collector and the persons interested are concerned, but it is not so among the persons interested in the land. The persons interested can get their dispute resolved either by asking the Collector to make a reference under section 18 of the Act or by a separate suit. The same view had been expressed earlier in *Hemanta Kumar Banerjee v. Satish Chandra Banerjee*, AIR 1941 Calcutta 635, *Hitkarini Sabha v. Jabalpur Corporation*, AIR 1958 Madhya Pradesh 339 and *Shri Deo Sansthan Chinchwad and others v. Chintaman Dharnidhar Deo and another*, AIR 1962 Bombay 214. Similar matter came up before me while sitting in Single Bench in *Jog Raj and others v. Benarsi Dass alias Bans Gopal etc.*, 1978 P.L.R. 258. I also took the same view and held that a suit is maintainable for recovery of an amount under proviso to section 31(2) of the Act.

6. Now, I advert to the cases referred to by Mr Bindra. In *Raja Nilmani Singh's case* (supra), there was a dispute between the Raja and his tenants regarding the compensation. The matter was referred to the Court under the Land Acquisition Act which apportioned the compensation between the Raja and his tenants. The Raja did not file an appeal under the provisions of the Act and then filed a suit for the purpose of setting aside the decision as to apportionment of the compensation given by the Court under the Act. From the facts, it is evident that the matter had been taken cognizance by the Court under the Act. Thereafter, the matter could not be taken cognizance of by the civil Court. In *Amolak Shah's case* (supra) as well, the matter had been referred at the instance of the interested parties to the Court under section 18 of the Act. Thereafter, a suit was filed by some of the interested persons. It was held to be barred for the reason that if the interested parties once resort to the remedy provided under the Act, they cannot file a civil suit thereafter. Thus, both the above cases are distinguishable and the learned counsel cannot derive any benefit from the observations made therein.

7. In *Birendra Nath Banerjee's case* (supra), the learned Bench also observed that where a person was not served with a notice under section 9 of the Act and for that reason failed to refer his claim or objection before the Collector and on whom there was no notice served

under section 12(2) of the Act and for that reason failed to apply for a reference within the statutory period mentioned in section 18, it could not be said that the special remedy under the Act being thus lost, such a person could not seek his remedy in the ordinary Court of law. It is clear from the above observations that the Bench does not dispute that in certain circumstances, an interested person can go to a civil Court. In the present case, the facts have been stated at length. The plaintiff-respondent clearly stated that he did not receive any notice from the Collector regarding the land in dispute and he did not come to know that it had been acquired. It is well settled that in order to determine the jurisdiction of the Court, the pleas in the plaint are generally taken into consideration. Reference in this connection may be made to the observations of a Division Bench in *Mt. Duiji Kunwar v. Mt. Baila Kanwar and others*, AIR 1932 Allahabad 460, wherein it was observed that to ascertain jurisdiction Court should regard allegations in the plaint.

8. In *Chiranji Lal's case* (supra), the learned Single Judge observed by way of obiter dicta that when a specific remedy is provided under a particular statute, then the jurisdiction of a Civil Court to entertain the suit is impliedly barred. The view expressed by the Supreme Court in *Dr. G.H. Grant's case* (supra) and by this Court in *Jog Raj's case* (supra), was not brought to the notice of the learned judge. With great respect to the learned judge, I do not agree with the view taken by him and overrule the same.

9. For the aforesaid reasons, I do not find any merit in the revision petition and dismiss the same with costs.

Petition dismissed.