

**1989 PLRONLINE 003**

**PUNJAB AND HARYANA HIGH COURT**

**Before: Justice N.C. Jain, J.**

**BISHAMBER - Appellant**

**Versus**

**STATE OF HARYANA AND OTHERS - Respondents**

**Regular First Appeal No. 146 of 1980**

**(i) Land Acquisition Act, 1894 (1 of 1894), Sections 30, 31(2) - Acquisition of land in occupation of occupancy tenants - Entitlement to compensation - Payment of compensation made to landowners despite protest by occupancy tenants - Apportionment petition by tenants - Maintainability of - Held, occupancy tenants are entitled to compensation - Payment of compensation made to landowners despite protest by occupancy tenants - Contention that tenants should file a civil suit for recovery of amount is not tenable - Apportionment petition by tenants is maintainable - Landowners directed to deposit money in court in which it would have been deposited under Section 31(2) but for the disbursement made to them. [Para 5, 6]**

“It has come in the statement of Bhajan Lal that the amount of compensation was disbursed to the landowner appellant in spite of the fact that protests were raised by him... On the basis of these facts, it has rightly been found by the learned Additional District Judge that the payment was wrongly made by the Collector even though there was a dispute with respect to the apportionment... A Collector acts against the express provisions of Section 31(2) of the Land Acquisition Act in making the payment of compensation money where there is a dispute as to who should receive the same. Such payment, however, does not oust the jurisdiction of the Court to hear the reference.” [Para 5]

**(ii) Land Acquisition Act, 1894 (1 of 1894), Sections 4, 30, 31(2) - Land acquisition - Compensation paid to landowners - No notice sent to occupancy tenants - Reference by occupancy tenants under Section 30 - Maintainability of - Held, no notices were sent to the respondents who were recorded as tenants before the acquisition proceedings - If the payment has wrongly been made, the present reference cannot be said to be barred - Reference by occupancy tenants under Section 30 is maintainable. [Para 5]**

“Moreover, as has been observed by the learned Additional District Judge, no notices were sent to the respondents who were recorded as tenants before the acquisition proceedings and, therefore, if the payment has wrongly been made, the present reference cannot be said to be barred.” [Para 5]

**(iii) Punjab Tenancy Act (XVI of 1887), Section 5(2) - Occupancy tenant - Tenants occupying land for over 30 years - Possession proved on basis of entries in Jamabandi - No rent paid by tenants but only land revenue - Presumption - Held, if a tenant proves that he has continuously occupied the land for 30 years and paid no rent therefor beyond the amount of land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of Sub-section (1) - Jamabandis prove the existence of factual position as contemplated by law for conferring occupancy rights - There is presumption of truth attached to the Jamabandis if not rebutted - Respondents proved themselves to be occupancy tenants. [Para 3]**

“A plain reading of the above provisions of the Act clearly shows that if a particular tenant proves that he had continuously been occupying a particular piece of land for 30 years and paid no rent beyond the amount of land revenue which was chargeable, a presumption would arise that such a tenant fulfills the conditions of clause (a) of sub-section (1) of section 5 of the Act. Since the Jamabandis prove the existence of factual position as contemplated by the law for conferring occupancy rights upon the respondents & since there is a presumption of truth attached to the Jamabandis which has not been rebutted in the instant case, no infirmity can be found with the findings arrived at by the learned Additional District Judge that the respondents have proved themselves to be occupancy tenants.” [Para 3]

#### **Cases Referred to:**

R.F.A. No. 82 of 1980, *Mohan Lal v. State of Haryana*, facts of the case taken as similar points involved. [Para 1]

1978 P.L.R. 389, *Yog Raj v. Banarsi Dass alias Bans Gopal*, held that Collector acts against express provisions of Section 31(2) of Land Acquisition Act in making payment of compensation money where there is dispute as to who should receive same; such payment does not oust jurisdiction of Court to hear reference; Court must rectify matter by ordering money be brought into Court. [Para 5]

**FACTS:** The Haryana Government by notification under Section 4 of the Land Acquisition Act on 16.02.1978 acquired land measuring 144.54 acres situated in village Bhulwana, Tehsil Palwal. Out of the acquired land, some belonged to the appellant. The Land Acquisition Collector determined the market value and disbursed compensation to the appellants. The respondents filed a claim petition under Section 30 of the Act claiming they were occupancy tenants. The case of the landowners was that respondents were not occupancy tenants and not entitled to compensation. The respondents claimed they were occupancy tenants from the time of their fore-fathers and entitled to entire compensation. The Additional District Judge after referring to Jamabandis on record showing their fore-fathers were in possession without payment of rent beyond land revenue for over 30 years, held that respondents were occupancy tenants entitled to compensation. The landowner preferred the present appeal.

Mr. C.B. Goel, Advocate for the Appellant.

Mr. Arun Jain, Advocate for private Respondents and Mr. B.S. Malik, A.A.G. with Mr. S.V. Rathee, Advocate.

## ORDER

**N.C. JAIN, J. (ORAL) - (02-05-1989)** - This judgment of mine would dispose of R.F.A. No. 146 of 1980 *Bishamber v. State of Haryana* and R.F.A. No. 82 of 1980 *Mohan Lal v. State of Haryana* because the points involved in both the appeals are similar and to this aspect of the matter both the counsel are agreed that both these appeals can be disposed of together by a common judgment. Rather, both the counsel are further agreed that the facts of the case for deciding both the appeals may be taken from the judgment rendered by the learned Additional District Judge in the case of *Bishambar v. State of Haryana*. This being the conceded position, I would be picking up the facts of the case therefrom.

2. The Haryana Government by issuance of a notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the 'Act') on 16.2.1978, acquired land measuring 144.54 acres. The land is situated in village Bhulwana, Tehsil Palwal. Out of the acquired land, some land belongs to the appellant before this Court. The Land Acquisition Collector determined the market value of the acquired land and the appellants were disbursed the amount of compensation. The respondent filed a claim petition under section 30 of the Act which was forwarded by the Land Acquisition Collector to the Court. The Additional District Judge by his impugned judgment has allowed the application of the respondents. Against the judgment of the learned Additional District Judge, the landowner has preferred the present appeal.

3. The case of the landowners before the learned Additional District Judge was that the respondents were not occupancy tenants and that they were not entitled to the amount in question which was rightly disbursed in favour of the appellant. On the other hand, the case of the respondents before the learned Additional District Judge was that they were occupancy tenants on the land from the time of their fore-fathers and, therefore, they were entitled to the disbursement of the entire amount of compensation. The Additional District Judge after referring to the entire evidence on the record of the case, came to the conclusion that the respondents are entitled to be declared as occupancy tenants and they were entitled to the compensation amount. For arriving at the aforesaid finding, the learned Additional District Judge has placed reliance upon several jamabandis on the record of the case by which it has been proved that their fore-fathers were in possession of the disputed land. In the column of rent the entry is 'Bashera Maalkhan Bawaja Kasht Darina'. This entry figures in favour of the respondents' fore-fathers in the Jamabandi for the year 1940-41 which was repeated in several other jamabandis and khasra girdawaris of later period. The learned Additional District Judge, in his ultimate conclusion found that the respondents were in possession of the disputed land for the last more than 30 years, without payment of any rent to the landowners and that they were only paying land revenue and cess upto to the date of acquisition. The evidence brought by the respondents squarely brings their case within the meaning and ambit of Section 5(2) of the Punjab Tenancy Act which reads as

under :-

“S. 5(2). If a tenant proves that he has continuously occupied the land for 30 years and paid no rent therefor beyond the amount of land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of Sub-section (1)”.

A plain reading of the above provisions of the Act clearly shows that if a particular tenant proves that he had continuously been occupying a particular piece of land for 30 years and paid no rent beyond the amount of land revenue which was chargeable, a presumption would arise that such a tenant fulfills the conditions of clause (a) of sub-section (1) of section 5 of the Act. Since the Jamabandis prove the existence of factual position as contemplated by the law for conferring occupancy rights upon the respondents & since there is a presumption of truth attached to the Jamabandis which has not been rebutted in the instant case, no infirmity can be found with the findings arrived at by the learned Additional District Judge that the respondents have proved themselves to be occupancy tenants. The findings of the learned Additional District Judge that the respondents are entitled to be declared occupancy tenants is, therefore, correct.

4. Mr. C.B. Goel, learned counsel for the appellant-landowner has argued that few years before the acquisition, the respondents has surrendered possession in favour of the appellant. This argument is unacceptable. A similar argument was raised before the Additional District Judge which was found to be against the revenue record. The argument does not find any support from the evidence brought on the record of the case and is, therefore, to be rejected. He further argued that the appellant had filed a suit for declaration that he is the occupancy tenant and that the same was withdrawn by him without seeking any permission to file a fresh one. On a perusal of the issues framed by the learned Additional District Judge, I have not been able to find any issue on the point which has been sought to be raised before me. The following three issues were framed :

1. Which of the party is entitled to the compensation amount and to what extent ?
2. Whether the petition under Section 30 of the Land Acquisition Act is not maintainable on the grounds alleged ?
3. Relief.

From the perusal of the issues, it is clear that other than the issue on merits, the only issue No. 2 is whether the petition under Section 30 of the Act is not maintainable on the grounds as alleged. The learned counsel has not been able to show me the specific ground on the basis of which the petition filed by the respondents can be said to be maintainable. The learned counsel has banked upon a plea raised in the application for reference wherein it is stated that the respondents has filed an application before the Civil Court. On the basis of such vague plea, no argument of the type which has been raised before me can be advanced particularly when it has been found under issue No. 2 by the learned Additional District Judge that issue No. 2 was not pressed during arguments. It was further observed that even otherwise there was no pleading that any civil suit was pending about this matter

and there was no evidence on the record. Once issue No. 2 was decided by the learned Additional District Judge against the appellant as having not been pressed, no other argument, in my view, would arise on this aspect of the matter on the basis of a vague plea. The present petition under Section 30 of the Act could not be held to be not maintainable. It appears that the parties were not serious about this point before the learned Additional District Judge and for this reason no evidence could be referred to by the counsel while arguing the present appeal. In any case, in the absence of any conclusive evidence, this court would not be taking a contrary view other than the one which has been taken by the learned Additional District Judge under issue No. 2.

5. It has been further argued by the learned counsel for the appellants that the apportionment petition is not maintainable as compensation has been disbursed to them. He further went on to argue that the respondents will have to file a civil suit for recovery of the amount of compensation. This argument is not acceptable. It has come in the statement of Bhajan Lal that the amount of compensation was disbursed to the landowner appellant in spite of the fact that protests were raised by him. In the other case, that is *R.F.A. No. 82 of 1980 Mohan Lal v. State of Haryana*, it has further been found as a fact by the learned Additional District Judge that the amount of compensation was deposited in the treasury under the revenue head and it was disbursed to the other landowners thereafter in spite of protests having been made regarding disbursement. On the basis of these facts, it has rightly been found by the learned Additional District Judge that the payment was wrongly made by the Collector even though there was a dispute with respect to the apportionment. On these basis, the relevant case law on the point, that is, *Yog Raj and others v. Banarsi Dass alias Bans Gopal and another, 1978 P.L.R. 389* comes into play. It has been held therein as under :

“A Collector acts against the express provisions of Section 31(2) of the Land Acquisition Act in making the payment of compensation money where there is a dispute as to who should receive the same. Such payment, however, does not oust the jurisdiction of the Court to hear the reference. The Collector being in error in making the payment, the courts must rectify the matter to bring the action of the Collector in line with the statutory requirements by ordering that the money be forthwith brought into Court as an interim measure.”

Moreover, as has been observed by the learned Additional District Judge, no notices were sent to the respondents who were recorded as tenants before the acquisition proceedings and, therefore, if the payment has wrongly been made, the present reference cannot be said to be barred.

6. No other point was urged by the counsel.

In the light of the observation made, there is no force in the appeals which are hereby dismissed with costs. The counsel's fee is quantified at Rs. 1000/- in each appeal. The appellants are directed to deposit the money on or before 31.10.1989 in the court in which it would have been deposited under Section 31(2) of the Land Acquisition Act but for the disbursement made to the appellants.

Appeals dismissed.