

Before M.M. Kumar & A.N. Jindal, J.J.

LACHHMAN SINGH AND ANOTHER,—Petitioners

versus

STATE OF PUNJAB & OTHERS,—Respondents

C.W.P. No. 18007 of 2007

22nd July, 2008

Constitution of India, 1950—Art. 226—Land of petitioners with co-owners sought to be acquired—High Court staying dispossession of co-owners—Petitioners seeking release of compensation—Whether respondents could refuse to disburse compensation to petitioners merely on ground that dispossession of other co-owners is stayed by High Court—Held, no—Possession of petitioners is independent and they are entitled to protect their possession—Petitioners offering independent possession in respect of share owned by them—Petition allowed while directing respondents to disburse compensation to petitioners after they hand over physical possession of land to the extent of their share.

Held, that the petitioners have offered possession of their share in the land which has not been accepted on the pretext of interim directions issued in CWP No. 8155 of 2006. In so far as the petitioners are concerned they have accepted the acquisition and the award subject to their right of enhancement. The respondents are not entitled to without compensation in respect of share of the land belonging to the petitioners by deferring it to the date of decision in CWP No. 8155 of 2006 is passed. Therefore, compensation to the petitioners have to be awarded to the extent of their share in the joint land.

(Paras 6 & 8)

Arun Bansal, Advocate *for the petitioners.*

Ms. Madhu Dayal, DAG Punjab.

L.S. Virk, Advocate for R.S. Khosla, Advocate *for respondent Nos. 2 and 3.*

M. M. KUMAR, J.

(1) The petitioners who are co-sharer in the acquired land have approached this Court with a prayer for quashing order dated 8th November, 2007 (Annexure P.5) passed by the Land Acquisition Collector, Punjab Urban Development Authority, Bhatinda, respondent No. 3. The petitioners have claimed disbursement of compensation to them.

(2) Brief undisputed facts may first be noticed. The petitioners are co-owners of the land comprised in Khasra No. 2199(2-11), 2200(3-10), 2201(3-13), 2202(8-3), 2220(56-1), totally 73 bighas 18 biswas land situated at Bhagu road, Bathinda and in Khasra No. 2203(3-4), 2204(2-0), 2205(4-11) totalling 9 bighas 15 biswas. After issuance of notification under Section 4 of the Land Acquisition Act, 1894 (for brevity 'the Act'), hearing of objections under Section 5A of the Act and issuance of declaration under Section 6 thereof award was announced on 6th March, 2007 by the Land Acquired Collector granting compensation of rupees thirty lacs per acre for the land acquired alongwith solatium. The Land Acquisition Collector also awarded compensation for structures, houses etc. The petitioners requested for release of their compensation which was not paid. Eventually on 10th August, 2007 they made representation to the Estate Officer and Addl. Chief Administrator PUDA (Annexure P-3). The petitioners were orally told by the respondents about the pendency of CWP No. 8155 of 2006 which was filed by other owners and the orders passed by the Hon'ble High Court on 26th May, 2006 staying the dispossession of the petitioners in the petition. As the respondents denied the compensation to the petitioners on the pretext of pendency of CWP No. 8155 of 2006, they filed C.M. No. 14892 of 2007 in CWP No. 8155 of 2006 seeking a direction to the respondents to release the awarded amount of compensation. They also moved an application for impleading them party in the petition. On 11th September, 2007, the petitioners were allowed to withdraw the applications with liberty to file appropriate petition. Petitioners then filed CWP No. 14861 of 2007 seeking release of awarded amount of compensation *qua* their land. The said petition was disposed of on 24th September, 2007 with a direction to the Land Acquisition Collector,

PUDA to consider the representation of the petitioners dated 10th August, 2007. Petitioners again approached the respondents for release of compensation alongwith a copy of the order dated 24th September, 2007. On receipt of the request of the petitioners, respondent No. 3 referred the matter to the Sub-Divisional Magistrate, Bhatinda seeking status report of possession etc. The same was then referred to Tehsildar Bhatinda. Accordingly Halqa Patwari submitted report dated 2nd November, 2007 (Annexure P. 4). Respondent No. 3 instead of releasing the compensation passed an order on 8th November, 2007 (Annexure P. 5) denying the release of compensation on the pretext that petitioners have a joint khata and they can get their joint khata partitioned by the competent authority for further action regarding payment of compensation. It was specifically submitted by the petitioners that their physical possession is independent and unquestioned by other share holders in the joint khata. The petitioners also offered possession to PUDA after due verification by the revenue agency.

(3) In the written statement the stand taken is that the claim of the petitioners has been rejected by the Land Acquisition Collector on the ground that their land is joint with other land owners who had challenged the acquisition proceedings in CWP No. 8155 of 2006. In that regard the relevant portion of the order is extracted below reads thus :

“..... During the course of hearing, the petitioners disclosed that though the area which have been acquired for phase 4 & 5, Bathinda is held jointly with other Khewatdar but still their physical possession of the area is independent and un-questioned by other share holders entered in this Khatta. They can hand over the possession of this area to PUDA by getting it verified on the spot by the Revenue Agency. On the submission of the petitioners, they were also told that as per provisions made under the Land Acquisition Act 1894, Section 16 the compensation of their acquired land can only be paid to them as soon as the physical possession of acquired land is taken by the PUDA. Hence in compliance with orders of Hon’ble High Court dated 24th September, 2007 which was received in this office on 15th October, 2007, annexure P. 3

application dated 10th August, 2007 was considered and the petitioners were advised to get their possession verified by the S.D.M., Bhatinda and hand it over to PUDA for taking further action for the payment of due compensation to them. SDM Bhatinda was requested,—*vide* his office letter No. 3774, dated 31st October, 2007 to submit report accordingly. S.D.M. Bathinda has sent report alongwith khasra Girdawari that out of the joint khata, the petitioners are in possession of area independently in the same khasra Nos. owned by other co-shares. The report of S.D.M. Bathinda only show the independent possession of area measuring 37 bighas 4 biswas but does not show their partitioned khatta. Hence the petitioners were told to get their joint khatta partitioned by the Competent Authority for further action regarding payment of compensation.....”

(4) Mr. Arun Bansal, learned counsel for the petitioners has submitted that the petitioner is prepared to give up physical possession within two weeks and compensation for the acquired land may be disbursed to them. According to the learned counsel the challenge by the other co-owners to the acquisition proceedings would not constitute a bar to the disbursement of compensation to the petitioners in respect of their share belonging to the petitioners because they accepted the acquisition of their land. In support of his argument, learned counsel has placed reliance on para 8 of a judgement of Hon'ble the Supreme Court in the case of **Ashwani Kumar Dhingra versus State of Punjab (1)**.

(5) Ms. Madhu Dayal, learned Deputy Advocate General and Mr. L.S. Virk, learned counsel for the respondents No. 2 and 3 have argued that once the petitioner is a joint owner alongwith others it would be improper to disburse compensation to the petitioners in the absence of partition of land. According to them in the event the writ petition i.e. CWP No. 8155 of 2006 is allowed and the acquisition is set aside then a dispute would arise which part of the land is released from the acquisition in favour of the writ petitioner in CWP No. 8155 of 2006.

(1) (1992) 2 S.C.C. 592

(6) We have thoughtfully considered the submissions made by the learned counsel for the parties and have perused the paper book with their able assistance. It is undisputed that a part of land of petitioners comprising in khasra No. 2199(2-11), 2200(3-10), 2201(3-13), 2208(8-3), 2220(56-1) totalling 73 bighas 18 biswas situated at Bhagu road, Bhatinda and in khasra No. 2203(3-4), 2204(2-0), 2205(4-11) totalling 9 bighas 15 biswas has been acquired by the respondents. The petitioners have also been issued notices under Section 9 of the Act on 5th May, 2006 (Annexures P. 1 and P. 2). Even the award has been announced granting compensation @ Rs. 30 lacs per acre alongwith 30% solatium on the awarded amount. The Collector has also awarded compensation in respect of structures/houses, tube wells, hand pumps and trees. It has also been conceded that the petitioners have offered possession of their share in the land which has not been accepted on the pretext of interim directions issued in CWP No. 8155 of 2006. In so far as the petitioners are concerned they have accepted the acquisition and the award subject to their right of enhancement.

(7) The only question which requires determination is whether the respondents could refuse to disburse compensation to the petitioners merely on the ground that other co-owners have challenged the acquisition of their land where their dispossession has been stayed. We find that the aforementioned question has to be answered in the negative because the controversy has been put to rest by Hon'ble the Supreme Court in **Ashwani Kumar Dhingra's case (supra)** In para 8 of the judgement it has been made clear that one co-owner may Challenge the acquisition whereas the other may accept the compensation which has to be paid to him. The aforementioned observations read thus :—

“...One co-owner may challenge the acquisition whereas the other co-owner may be satisfied with the acquisition and ask for compensation and even for enhancement of compensation; other brother may challenge the acquisition proceedings in his own right; merely because one brother accepts compensation, other brother is not estopped from challenging acquisition. Similarly, where one co-owner challenges acquisition, his rights will not be affected merely because

other co-owner had accepted acquisition and the compensation.” (emphasis supplied)

(8) When the facts of the present case are examined in the light of the observations made by Hon’ble the Supreme Court in **Ashwani Kumar Dhingra’s case (supra)** no doubt is left that the respondents and they are not entitled to withhold compensation in respect of share of the land belonging to the petitioners by deferring it to the date the decision in CWP No. 8155 of 2006 is passed. Therefore compensation to the petitioners have to be awarded to the extent of their share in the joint land.

(9) The argument of the learned State counsel with regard to partition of the share of the petitioner from the other co-owners has failed to impress us because in the event the CWP No. 8155 of 2006 filed by other co-owners is allowed then the land to the extent of their share can be given to them and the respondents would become co-owner of the land in place of the petitioners. Moreover, the possession of the petitioner is independent and in law they are entitled to protect their possession as has been held by a Five Judges Bench of this Court in the case of **Ram Chander versus Bhim Singh and others** RSA No. 815 of 1994 of 1994 decided on May 23, 2008. In para 22 of the judgement, the Bench observed as under :—

“22. It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns. i.e. a joint undivided interest in the joint property. A sale therefore of land from a specific khasra/killa number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers. It would also be necessary to mention here that where a co-owner in

possession of specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possession, till such time as the joint estate is partitioned. “emphasis added)

(10) Therefore, the right of the petitioners for disbursement of compensation cannot be postponed especially when the petitioners are offering independent possession in respect of the share owned by them.

(11) In view of the above, writ petition succeeds. The petitioners shall handover physical possession of the land to the extent of their share to the respondents within a period of one month. The respondents shall within a further period of one month disburse compensation to them in lieu of their share in the land.

R.N.R.

Before M.M. Kumar & Ajay Kumar Mittal, J.J.

M/S KUMAR BROTHERS (CHEMISTS) PVT. LTD.,—Petitioner

versus

UNION TERRITORY OF CHANDIGARH & OTHERS,—Respondents

C.W.P. No. 7499 of 2006

11th April, 2008

Constitution of India, 1950—Art. 226—Punjab General Sales Tax Act, 1948-S. 5—Notification dated 30th November, 2005 issued by Chandigarh Administration—Seller paying tax to manufacturer—Notification dated 30th November, 2005 reducing rate of sales tax with retrospective effect issued—Power to issue notification with retrospective effect—Exercise of—Neither any express nor implied power conferred by legislation on concerned authorities to issue such a notification by giving it retrospective effect—Notification liable to set aside.