The State
v.
Ranbir Singh

Narula, J.

of witnesses recorded under section 164 of the Code, in case the prosecution was not relying on them.

K.S.K.

APPELLATE CIVIL

Before Inder Dev Dua and P. C. Pandit, JJ.

RAJINDER SINGH AND OTHERS,—*Appellants*,

versus

LAKHA SINGH AND OTHERS,—*Respondents*.

Regular First Apeal No. 170 of 1958.

1965

August, 25th

Land Acquisition Act (1 *of* 1894)—*S.* 23—*Land-owned jointly by various co-oweners acquied by the Government—Land not partitioned but co-owners in possession of various holdings although not in accordance with their shares in the land—Compensation amount—How to be distributed—Whether in accordance with their shares in the joint land or on the basis of their actual possessions on the date of the acquisition.*

Held, that where the joint land owned by various co-owners which has not been partitioned but the co-owners are in possession of various holdings though not in accordance with the shares they hold therein, is acquired by the Government, the compensation amount in respect thereof has to be awarded in accordance with the title of each land-holder in the joint land acquired, irrespective of the fact whether they are in actual possession of more or less area on the date of acquisition. The reason is that one co-sharer in possession of a joint land holds the same on behalf of all the co-shares. His possession for howsoever a long period cannot make him an exclusive owner of the land held by him, unless he sets up a hostile title by some overt act to the knowledge of the other co-sharers and the latter do not take any action within limitation from that date. His possession over joint land is always considered to be permissive till partition takes place, when he would be entitled to the area in proportion to his actual share in the joint land. The fact that before partition he was allowed by the other co-sharers to occupy more area than the one to which he was actually entitled, would not make him an owner of the excess area and thus he would not be entitled to more compensation on the basis of his possession alone.

Regular First Appeal from the order of the Court of Shri Murari Lal Puri, District Judge, Kapurthala, dated 23rd January, 1958, partly

accepting the award made by the Collector, Kapurthala, and holding that compensation amount should be paid to the various co-sharers in accordance with their respective shares in the joint land and also remanding the case to the Collector with the direction that the direction that the apportionment statements should be prepared afresh and the compensation amount payable to each person interested in the land in dispute be calculated in the light of his decision and also enhancing the rate of compensation for the raize *quality of land from Rs* 340 *to Rs* 500 *per* acre.

K. C. NAYAR AND C. M. NAYAR, ADVOCATES, for the Appellant.

R. K. D. BHANDARI, ADVOCATE AND S. S. DEWAN, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents,

JUDGMENT

Pandit, J.

PANDIT, J.—An area of land measuring 884 *acres* 4 *kanals* and 3 *marlas* situate in village Devasinghwala in District Kapurthala, was acquired by the Government for a public purpose under the provisions of the Land Acquisition Act, 1894. Notification under section 4 was issued on 15th September, 1955. This land was held jointly by various landowners, whose names appeared in the revenue records and there had been no partition amongst them. Some of the landowners had been in possession of certain specified *khasra* numbers and many of them had actually alienated most of the land out of their shares. The Collector fixed the value of the different qualities of land at the following rates:—

		Rs.
Raiz	..	340 per acre.
Banjar	..	50 per acre.
Ghairmumkin	..	25 per acre.

On this basis, the Collector awarded a total compensation amount of Rs. 1,84,073/3/-. The only question with which we are concerned in the present appeal is regarding the mode of payment of this compensation to the various landowners. The Collector in his award dated 8th September, 1956, on this point stated thus—

> "The amount of compensation will be paid to parties respectively, as worked out in the enclosed apportionment statement 'A' and 'B' according to their shares of rights as recorded in the record of rights."

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In these statements, however, the compensation amount had been worked out according to the good and bad quality of land which was actually in possession of the various landowners on the date of acquisition, with the result that the amount awarded to them was not in accordance with the shares owned by them in the joint land. Several landowners whose shares were more were awarded less compensation than those who were holding smaller shares.

A reference was then made under section 18 of the Land Acquisition Act by the Collector to the learned District Judge, Kapurthala, at the instance of several landowners. In his award, dated 23rd January, 1958, the learned District Judge did not approve of the mode of payment of this compensation as determined by the Collector in the apportionment statements 'A' and 'B' and instead held that compensation amount should be paid to the various co-sharers in accordance with their respective shares in the joint land. He then remanded the case to the Collector with the direction that the apportionment statements should be prepared afresh and the compensation amount payable to each person interested in the land in dispute be calculated in the light of his decision. It may also be mentioned that the learned District Judge enhanced the rate of compensation for the *raiz* quality of land from Rs. 340 to Rs. 500 per *acre*. Against this, Rajinder Singh and 26 others, who are co-sharers in this land, have filed the present appeal.

Learned counsel for the appellants submitted that the learned District Judge was in error in reversing the decision of the Collector regarding the mode of payment of the compensation amount. He urged that the method adopted by the Collector for the distribution of the compensation on the basis of possession of each landowner on the date of the acquisition was correct. It was also urged that since some of the landowners had been working hard and had improved the quality of the land in their possession, therefore, they were entitled to a higher amount of compensation than the others. In support of this contention, he relied on the provisions of section 23 of the Land Acquisition Act and two decisions, namely, *Rajbans Sahay* v. *Mahabir Parshad* (1) and *Manche Anege Akue* v.

(1) 37 I.C. 464.

Mahche Koto Abadio IV (2), though he conceded that there was no direct authority on the point in his favour.

In the present case, there is no dispute about the shares of the various co-owners in this joint land, which has been acquired by the Government. It is also undisputed that there has been no partition amongst the various co-sharers. They were, however, in possession of various holdings, but not in accordance with the shares they held in this land. The short question for decision is that when this land is acquired by the Government, then should the compensation amount be distributed amongst the various co-owners in accordance with their shares in the joint land or on the basis of their actual possessions on the date of the acquisition? I have no manner of doubt that the compensation amount has to be awarded in accordance with the title of each landholder in the joint land acquired, irrespective of the fact whether they were in actual possession of more or less area on the date of acquisition. If one were to accept the contention of the learned counsel for the appellants, it would lead to very absurd results. Suppose, a co-sharer is absent from the village and is not in possession of any area of the joint land on the date of acquisition, then he would not be entitled to any amount of compensation, if the same was to be awarded on the basis of possession and not title. It is beyond doubt that (one co-sharer in possession of a joint land holds the same on behalf of all the co-sharers. His possession for howsoever a long period cannot make him an exclusive owner of the land held by him, unless he sets up a hostile title by some overt act to the knowledge of the other co-sharers and the latter do not take any action within limitation from that date. His possession over joint land is always considered to be permissive till partition takes place, when he would be entitled to the area in proportion to his actual share in the joint land. The fact that before partition he was allowed by the other co-sharers to occupy more area than the one to which he was actually entitled, would not make him an owner of the excess area and thus he would not be entitled to more compensation on the basis of his possession alone.) In the instant case it is not the position of any party that any co-sharer was in adverse possession for more than 12 years and thus his right to the property

(2). A.I.R. 1927 P.C. 262:

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in his possession had become indefeasible and, as such, he was entitled to the compensation on the basis of the area which was in his actual possession on the date of the acquisition. The argument that he had improved the land in his occupation and was, therefore, entitled to a higher compensation has no force, because he had already derived benefit of that improvement on the land by cultivating the same exclusively. Moreover, when he was making any improvement, he very well knew that it was joint land and not his exclusive property. Consequently, whatever he was doing was with the full knowledge that at the time of partition that particular land may or may not come to his share. The provisions of section 23 of the and Acquisition Act deal with the matters which are to be considered while determining the amount of compensation. There is nothing in that section which in any way supports the contention of the learned counsel for the appellants. *Rajbans Sahay's case* (1) has no application to the facts of the present case, because in that authority it was held that the persons who were in adverse possession for more than 12 years were entitled to compensation as against the collateral heirs of the last male holder whose property was acquired. *Manche Anege-Akue's case* (2) is also not relevant to the point in controversy. In that case all that is stated is that where at the time of acquisition, the land acquired is found to be in the sole and exclusive possession of one, that one is *prima facie* entitled to the compensation money and any other person claiming compensation amount must prove a better title in himself. That was not a case of joint owners, but two persons were claiming the same amount of compensation. Out of them only one was in possession of the property and it was held that that person was entitled to its compensation.

In view of what I have said above, there is no substance in the contention of the learned counsel for the appellants and the appeal, consequently, fails. The same is dismissed, but with no order as to costs.

I may, however, mention that two preliminary objections were raised by the learned counsel for the respondents—(1) that propert court-fee had not been paid by the appellants in this appeal, because they should have paid *ad valorem* court-fee on the difference between the

amount now claimed by them and the one which was allowed by the learned District Judge. The appellants had, however, paid a fixed court-fee of Rs. 19/8/- under Article 17 Schedule I of the Court-fee Act; and (2) that one of the respondents, namely, Makhan Singh son of Sher Singh and two of the appellants, that is, Hari Singh, son of Mayya Singh, and Mota Singh, son of Harnam Singh, had died during the pendency of the appeal in this Court and their legal representatives had not been brought on the record within limitation, with the result that the appeal had abated *qua* them. The result of this abatement was that the appeal could not proceed against the remaining respondents as well. Reliance for this submission was placed on a decision of the Supreme Court in *State of Punjab* v. *Nathu Ram* (3). There is, however, no need to decide these preliminary objections, because the appeal is being dismissed on the merits as indicated above.

Pandit, J.

INDER DEV DUA, J.—I agree.

Dua, J.

B.R.T.

REVISIONAL CIVIL

Before R, S. Narula, J.

SHRI DEWAN CHAND,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Revision 119 of 1964

1965

August, 25th

Arbitration Act (X of 1940)—Ss. 2 and 8(2)—Agreement in writing signed by the parties to refer their disputes to a named arbitrator but the name of the arbitrator scored out before the agreement is signed—Whether valid and can be enforced under section 8.

Held, that there can be three categories of arbitration cases. First is the case, where parties may name an arbitrator in their arbitration agreement. In the second category of cases, parties may agree to refer their disputes to arbitration without naming anyone or without even defining the qualifications of the person sought to be appointed as

...R. 1962 S.C. 89.