

Before I. S. Tiwana, J.

GOPAL SINGH,—Appellant.

*versus*

LAND ACQUISITION COLLECTOR and others,—Respondents.

Regular First Appeal No. 1751 of 1979.

December 17, 1988.

*Land Acquisition Act (I of 1894)—Ss. 18, 20, 21 and 23—Code of Civil Procedure (V of 1908)—O. 41, Rl. 23-A—Claim for compensation as tenant negatived—Such cultivator effecting improvements in land—Right to claim compensation—Such person whether a person 'interested'—Payment of compensation to owner—Effect of such payment on the rights of cultivator.*

*Held*, that in spite of the fact that some compensation has been paid to the Mandir or its trustees, does not deprive the appellant of the right to claim compensation in his own right if he is otherwise able to establish his claim. (Para 3).

*Held*, that in case cultivator is in a position to establish that he had raised constructions and had effected other improvements on the land in question by way of planting trees or sinking a tubewell, etc. he is certainly entitled to be compensated for what he has been deprived of and his case cannot be shut out as that of a mere trespasser. (Para 3).

*Regular First Appeal from the order of the Court of Shri Gian Inder Singh, Additional District Judge, Ludhiana, dated 20th April, 1979 rejecting the reference application under section 18 of the Land Acquisition Act and there is no order as to costs.*

*Claim:—*Petition under section 18 of the Land Acquisition Act against the award dated 11th February, 1977 regarding the land acquired by the colonization department,—*vide* notification under sections 4 & 6 of the Land Acquisition No. 1122-RD(4)-76/5579/5667, dated 2nd/3rd March, 1976 notified in the gazette, dated 2nd/3rd March, 1976 and for referring the same to the District Judge, Ludhiana for determination of the compensation.

M. R. Midha, Advocate, for the appellant.

B. S. Gupta, Advocate with Govind Goel, Advocate, for the respondents.

Sanjay Bansal, Advocate, for respondents Nos. 4 to 6.

K. P. Bhandari, A. G. Punjab with K. B. Bhandari, Advocate, for State.

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JUDGMENT

*I. S. Tiwana, J.*

(1) The material facts of the case are sufficiently reflected in the judgment under appeal. Here suffice it to note that the appellant's claim under section 18 of the Land Acquisition Act (for short, the Act) for compensation as a tenant has been negated by the District Court (Additional District Judge, Ludhiana) primarily on the ground that there was no valid lease deed in his favour. The land concededly belonged to Shivala (Mandir) Masani Karmi. Though initially the appellant had failed to implead his landlord, i.e., the Mandir or its trustees as parties to the litigation, yet as a result of the application, dated March 31, 1978 under Order 1, Rule 10 of the Code of Civil Procedure, he impleaded them as parties to the reference. In the light of the contentions raised by the parties, the Court put them to trial on the following issues:—

1. Whether the petitioner was lessee of Mandir Shivala Masani Karmi on the suit land ?
2. Whether the award made by respondent No. 1 in favour of respondent No. 2 and 3 was illegal, void and ineffective to the rights of the petitioner ?
3. Whether the petitioner had constructed building over the acquired land, if so, to which amount and to what effect ?
4. Whether the petitioner is entitled to any compensation amount regarding the acquired land ?

(2) During the course of hearing before me, Mr. Midha, learned counsel for the appellant, raised amongst other, the following contentions which do not appear to have been adverted to by the lower Court, while deciding the case :—

- (i) Even if Amar Singh who undisputably executed the lease deed dated March 4, 1963, in favour of the appellant, was not proved to be one of the trustees or duly authorised to execute the same, still he being a *de facto* trustee, manager or Mohtmim, was entitled to create the lease

rights in favour of the appellant and on that account the latter is entitled to apportionment of the compensation awarded in favour of the Mandir.

- (ii) In case the appellant is not to be held to be a lessee of the land in question, still he not being a "mere trespasser" was entitled to be compensated for a number of improvements, such as, making the land cultivable, plantation of trees, sinking of tubewell and raising other buildings, effected by him. He was also entitled to be compensated for the loss of the crop at the time of the taking of the possession of the land by the Collector. In other words, the appellant's possession of the land as a tiller under a *bona fide* title or a claim of title should have been distinguished from that of a trespasser.

(3) So far as the claim of the appellant for apportionment or sharing of the compensation with the real owner or his landlord is concerned, the same does not appear to be well justified for the short reason that no such claim was put forth before the Collector nor the latter made any such reference to the Court. By now it is fairly well settled that jurisdiction of the Courts under the Act is a special one and strictly limited by the terms of sections 18, 20 and 21 of the same. (See *Pramatha Nath Mullick Bahadur vs. Secretary of State* (1). In that view of the matter, the trustees of the Mandir were not at all a necessary party and were not required to be impleaded as parties as a result of the application filed by the appellant under Order 1 Rule 10, C.P.C. At the same time, appellant's right to a reference is not taken away merely because compensation has been paid to the Mandir or its trustees. By no stretch of imagination the appellant who was a cultivator of the land in question and claims to have effected a number of other improvements on the same can be held to be a person "not interested" as envisaged by section 18 of the Act. Further, under section 23 of the Act, the Court awards compensation not market value, though market value is one of the factors to be taken into consideration. The scheme of the Act, i.e., preamble and various sections of the Act, clearly indicate that compensation has to be paid to a person interested. Therefore, in spite of the fact that some compensation has been paid to the Mandir or its trustees, does not deprive the appellant of the right to claim compensation in his own right if he is otherwise able to establish his claim. The Mandir or the trustees, i.e., the real owner

(1) A.I.R. 1930 Privy Counsel 64.

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would of course not be entitled to anything more than what has been paid to them for having accepted the award. Similarly the other stand of the appellant's counsel cannot lightly be brushed aside. In *Vallabhdas Naranji, Khot of Kanjur v. The Development Officer Bandra*, (2), their Lordships of the Privy Council have, in matters of payment of compensation under the Act, drawn a clear distinction between the claims of a "mere trespasser" as contradistinguished from possession under "any *bona fide* title or claim of title". They firmly ruled that there is no absolute rule of law in India that whatever is affixed or built on the soil becomes a part of it and is subjected to the same right of the property as the soil itself. This was said in the context where the Government had entered into possession of a particular piece of land and erected buildings thereupon before the necessary declaration under section 6 of the Act. The argument raised on behalf of the owner claimant was that since the buildings had been constructed prior to the issuance of the necessary declaration under the Act, the same had become the claimant's property and he was entitled to the value of the land in the State in which it then was, i.e., to say that the buildings on it. While rejecting the claim their Lordships opined thus :—

"They agree with what was apparently the view of both Courts in India that under the circumstances of this case as already set forth, by the law of India, which they appear to have correctly interpreted, the Government officials were in possession "not as mere trespassers" but under such a colour of title that the buildings erected by them on the land ought not to be included in the valuation as having become the property of the landowner."

The stand of the State in that case can well be substituted by the stand of the appellant in the instant case. In case he is in a position to establish that he had raised constructions and had effected other improvements on the land in question by way of planting trees or sinking a tubewell, etc., he is certainly entitled to be compensated for what he has been deprived of. His case cannot be shut out as that of a mere trespasser.

(4) I am, therefore, satisfied that the entire matter deserves to be gone into afresh and adjudicated upon by the trial Court. Thus I set aside the judgment under appeal and send the case back for retrial and decision afresh as envisaged by Order 41 Rule 23A, C.P.C. The parties would be allowed to lead fresh evidence, if they so choose, in support of their respective stands. I, however, pass no order as to costs.

R. N. R.

*Before G. C. Mital and S. S. Sodhi, JJ.*

COMMISSIONER OF INCOME TAX, JALANDHAR,—*Applicant.*

*versus*

M/S. SUNIL THEATRE,—*Respondent.*

*Income Tax Reference No. 48 of 1985.*

February 2, 1989.

*Income Tax Act (XLIII of 1961)—Ss. 77(1) and 256(1)—Unregistered firm becoming registered firm in subsequent years—No change in Constitution of firm—Loss incurred by un-registered firm—Whether can be carried forward in subsequent years.*

*Held.* that after considering the provisions of S. 77(1) of the Income Tax Act, 1961 and other relevant provisions, we are of the opinion that the Karnataka High Court has come to the correct conclusion on the interpretation of S. 77(1) of the Act, that if an unregistered firm becomes registered firm in the subsequent years, the loss incurred by the un-registered firm can be carried forward in the subsequent years inspite of the registration.

(Para 2).

*Held.* that there is no change in the constitution of the firm and, therefore, the word 'firm' used in the end of S. 77(1) of the Act would include both, registered as well as un-registered firm. The registration of the firm does not take away the benefit, which would have accrued to it under S. 77(1) of the Act, if it had remained un-registered.

(Para 2).