

APPELLATE CIVIL

Before J. S. Bedi and Prem Chand, Pandit, JJ.

CH. KEHAR SINGH AND ANOTHER,—Appellants,

versus

UNION OF INDIA AND ANOTHER,—Respondents.

Regular First Appeal No. 82-D of 1955.

Land Acquisition Act (I of 1894)—S. 18—Reference under, by one of the co-owners for enhancement of compensation awarded—Whether enures for the benefit of other co-owners as well.

1962

Sept., 10th

Held, that if the property acquired is joint and the co-owners have no distinct and specified shares therein, then a reference under section 18 of the Land Acquisition Act, 1894, by one of the co-owners for the enhancement of the compensation awarded by the Land Acquisition Collector will enure for the benefit of other co-owners as well. In such a case, it can be safely concluded that the co-owner who is wanting enhancement in the compensation, was also acting on behalf of the other co-owners, because their interests are joint and indivisible. Once his share is specified, then he would be acting on his own behalf only. Till that stage is reached, he would be deemed to be acting on behalf of all the co-owners in the property. For instance, if the property is owned by a joint Hindu Family, then the various members constituting the same have got no specified shares therein and if the application is made by any one of them under section 18 of the Act, the same would be deemed to have been filed on behalf of the other members of the joint Hindu Family as well.

Regular First Appeal from the order of Shri Gobind Ram Budhiraja, President, Improvement Trust Tribunal, Delhi, dated the 29th December, 1954, enhancing the Compensation from Rs. 49,325-6-0 to Rs. 63,615-11-0 and also holding that the appellants would not be entitled to the benefit of this enhancement.

S. L. SETHI, ADVOCATE, for the Appellant.

BISHAMBER DAYAL AND KESHAV DAYAL, ADVOCATES, for the Respondents,

JUDGMENT

Pandit, J.

PANDIT, J.—House bearing Nos. 6034 to 6047 situate in Ward No. 14 of the Delhi Municipal Committee was acquired by the Delhi State Government for the construction of a Municipal Girls School. In proceedings before the Land Acquisition Collector for determining the compensation thereof, Umrao Singh, one of the owners, stated that he was the owner of one-half share in this house and the remaining one-half belonged to his brother Kehar Singh. The position taken by Kehar Singh, on the other hand, was that the house belonged to him, his brother, Umrao Singh, and Harpal Singh, adopted son of their brother, Risal Singh, in equal shares. The Collector awarded a sum of Rs. 49,325-6-0, as the amount of compensation for the property in dispute. As regards the question of apportionment, a reference under section 31(2) of the Land Acquisition Act, 1894 (hereinafter called the Act), was made to the Court to determine as to whom this compensation money should be paid. Umrao Singh alone filed an application under section 18 of the Act on 10th December, 1952. His objections to the Collector's award were (1) that the area of the land acquired was 467 square yards and not 443.8 square yards, as found by the Collector, (2) that the compensation awarded by the Collector was inadequate because the market-value of the property on the date of acquisition was not less than Rs. 93,400, (3) that the Collector made a mistake in not allowing compensation under section 23, clause sixthly, and (4) that the Collector erred in not holding the applicant entitled to one-half of the compensation money, as he was owner of one-half of the property acquired, the other half being owned by Kehar Singh. On receipt of the application of Umrao Singh, a reference was made by the Collector to the Court under section 19 of the Act. The

Court issued notices to Kehar Singh and Harpal Singh under section 20 of the Act. On 5th February, 1954, both of them filed their separate replies, wherein they stated that the compensation assessed by the Collector was inadequate and the same be enhanced and divided between them and Umrao Singh, in equal shares.

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On the pleadings of the parties, the following issues were framed :—

- (1) Whether the area of the land acquired is 474.5 square yards as against 443.8 square yards, as found by the Special Land Acquisition Collector ?
- (2) Is the petitioner entitled to 15 per cent on account of compulsory nature of the acquisition ?
- (3) To what enhancement in the amount of the compensation, if any, is the petitioner entitled ?
- (4) Is the petitioner entitled to one-half of the amount of compensation being owner of one-half of the property acquired ?
- (5) Relief.

The learned Judge held that the area of the property acquired was 443.8 square yards, as found by the Land Acquisition Collector and the total compensation payable in respect thereof was Rs. 63,615-11-0. With regard to issue No. 4, it was held that in the connected reference under section 31(2) of the Act, the parties had agreed that the proceedings should be stayed pending the decision of the dispute, which formed the subject-matter of a separate civil suit between them. No decision was, therefore, given on this issue. The learned

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Judge also ordered that since it was only Umrao Singh, who had filed an application under section 18 of the Act, he alone was entitled to his share in the enhanced value of the property. Kehar Singh and Harpal Singh had made no such applications and even though in reply to the notices served on them, they had filed applications on 5th February, 1954, asking for the enhancement of the compensation awarded by the Collector, they were not entitled to the benefit of any increase in compensation. Against this, the present appeal has been filed by Kehar Singh and Harpal Singh, and the same has been resisted by the Union of India.

Learned counsel for the appellants contended that the Additional District Judge was in error in holding that the appellants were not entitled to their share in the enhancement allowed by him over the compensation awarded by the Collector. In this connection, he submitted two grounds— (1) that the application under section 18 of the Act, filed by Umrao Singh, should be deemed to have been filed on behalf of Kehar Singh and Harpal Singh as well, because the property acquired was joint and the shares of the co-owners therein were not separate and distinct on the date when the reference under section 18 of the Act was made by Umrao Singh and (2) Since both Kehar Singh and Harpal Singh, had filed applications dated 5th February, 1954, in reply to the notices issued by the Court to them, the learned Judge should have determined their claims and awarded them their share in the enhanced compensation. Learned counsel for the respondent, on the other hand, submitted that it was only Umrao Singh, who had made the application under section 18 of the Act. Under the law, therefore, it would be assumed that it was he alone who was dissatisfied with the award and the other two, namely,

Kehar Singh and Harpal Singh, had accepted the award and were satisfied with the amount of compensation awarded by the Land Acquisition Collector. Under these circumstances, according to the learned counsel, the application under section 18 of the Act could not be deemed to have been filed on behalf of Kehar Singh, and Harpal Singh, also. He further submitted that under section 21 of the Act only the objections filed by the applicant under section 18 were to be considered and the claims of those, who merely filed replies to the notices issued by the Court under section 20 of the Act had not to be adjudicated upon.

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As regards the first ground raised by the learned counsel for the appellants, it is common ground that there is no authority of this Court on this point. As I look at the matter, if the property acquired is joint and the co-owners have no distinct and specified shares therein, then a reference under section 18 of the Act by one of the co-owners for the enhancement of the compensation awarded by the Land Acquisition Collector will ensure for the benefit of other co-owners as well. In such a case, it can be safely concluded that the co-owner, who is wanting enhancement in the compensation, was also acting on behalf of the other co-owners, because their interests are joint and indivisible. Once his share is specified, then he would be acting on his own behalf only. Till that stage is reached, he would be deemed to be acting on behalf of all the co-owners in the property. For instance, if the property is owned by a joint Hindu family, then the various members constituting the same have got no specified shares therein and if the application is made by any one of them under section 18 of the Act, the same would be deemed to have been filed on behalf of the other members of the joint Hindu family as well. This view of mine finds support in a Division Bench authority of the

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Kerala High Court reported as *State v. Narayani Pillai Kuttiparu Amma and another* (1). In this case, the application for reference under section 18 of the Act was made only by one co-owner, who was entitled to a one-fourth share in his own right and who had also purchased the one-fourth share of another co-sharer. Thus, he was entitled to one-half share in the entire property. On a reference made by him, the learned Additional District Judge enhanced the amount of compensation for the entire property and gave the benefit of this enhancement to the other co-sharers as well, even though they had not filed any application under section 18 of the Act. On an appeal by the State, the learned Judges of the Kerala High Court set aside the judgment of the learned Additional District Judge and held that the other co-sharers were not entitled to any share in the enhanced compensation, because by not filing an application under section 18 of the Act, they could be said to have accepted the award given by the Land Acquisition Officer and the application made by the other co-owner must be deemed to have been filed on his own behalf, when he was, admittedly, owning a specific one-half share in the property acquired. During the course of this judgment, the learned Judges observed thus—

“Where the award is in favour of several persons having no separate and distinct interest in the property acquired, all of them may be said to be interested in the objection raised by one or more of them to the award made by the Land Acquisition Officer. In such a case, the objection may be deemed to have been made on behalf of all.”

(1) A.I.R. 1959 Kerala 136.

Applying the above principle, I find that in the present case it cannot be said that Umrao Singh, had a separate and distinct share in the property acquired when he made the application, under section 18 of the Act. All that can be said is that he was claiming one-half share in this property, while the other co-owners were asserting that he had one-third share therein, the remaining two-thirds being owned by them in equal shares. This matter had not been determined by the Land Acquisition Collector, but he made a reference regarding the same under section 31(2) of the Act to the learned Additional District Judge. The learned Judge also did not decide this question because, according to the parties, a separate civil suit was pending in this connection. It is apparent, therefore, that it cannot be definitely stated as to whether Umrao Singh, had a separate and distinct share in the property acquired on 10th December, 1952, when he filed the application under section 18 of the Act. For the proper disposal of this case and in the interest of justice, it is necessary that there should be a specific finding on this point. It may be mentioned that this finding will also be of great assistance in deciding the second ground raised by the learned counsel for the appellants. I would, therefore, send this case back to the learned Additional District Judge for determining this question after giving the parties an opportunity of leading evidence thereon. He should send his report within three months from today. Parties have been directed to appear before the learned Additional District Judge on 17th September, 1962.

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J. S. BEDI, J. I agree.

Bedi, J.

B.R.T.

