

Before K. Kannan, J.

SOHAN SINGH(DIED) THROUGH HIS L.RS.,—Appellant

versus

MANMOHAN NATH & OTHERS,—Respondents

RFA No. 536 of 1983

8th November, 2011

Land Acquisition Act, 1894 - S.18 & 30 - Punjab Security of Land Tenures Act, 1953 - S.18 - Punjab Land Reforms Act, 1972 - Compensation paid under Act for land acquired - Appellant claimed he raised some crops & trees and expended for improvement of said land - District Judge enhanced compensation payable to owners but claim of Appellant was rejected - Held, appeal allowed holding rejection of tenants' claim for compensation awarded was unjust and tenant was entitled to 1/3rd share with interest accrued thereon.

Held, That appellant-Tenant had made a claim before the Collector that he was entitled to compensation as a tenant and even the order records that he had claimed tenancy rights for more than 30 years and, therefore, the reference was being made under Section 30. Claim could not have been rejected on the ground that he had restricted his claim only to value of the crops & trees and not in respect of the value of the property itself as a financial recompense to his tenancy rights.

(Para 5)

Further held, that insofar as apportionment is concerned, this court in *Bihari Lal v/s Harinder Singh & Ors*; AIR 1977 P&H 165 has held that it would be appropriate to apportion the compensation between a tenant and the landowner in the ratio of 1:3, in accordance with Section 18(3) Punjab Security of Land Tenures Act which prescribes that purchase price to be paid by the tenant at 3/4th of the value of the land as determined under Section 18(2). The rejection of the tenants' claim for compensation awarded was unjust and tenant was entitled to 1/3rd share with interest accrued thereon.

(Para 6)

PPS Dugal, Advocate, and Mr. S.S.Kamboj, Advocate, *for the appellant.*

Amit Aggarwal, Advocate, for respondents 1 to 3.

S.S.Sahu, Assistant Advocate General, Punjab.

K. KANNAN, J.

(1) The appeal is against the judgment of the Additional District Judge exercising jurisdiction as a Reference Court under Section 30 of the Land Acquisition Act. The adjudication related to acquisition of property of 62 kanals 11 marlas of agricultural land that belonged to respondents 2 and 3 for construction of a New Mandi Township at Ferozepore City in the year 1978. The appellant claimed that he was a tenant in relation to the property and at the time of acquisition, he had actually raised some crops and trees and had also expended for improvement of the land. It appears on ascertainment of compensation payable, the owners had moved an application under Section 18 for enhancement while the appellant had moved under Section 30 before the Collector for apportionment of the compensation determined by the Collector. The reference had, therefore, been made, according to the petitioner, both under Sections 18 and 30. The District Judge had enhanced compensation as originally determined by the Collector to Rs.1,800/- per kanal. The claim of the appellant, however, had been rejected totally. It is against this judgment rejecting the appellant's claim that is the subject matter of appeal.

(2) Dealing with the evidence adduced on behalf the appellant, the Court below had considered the evidence of the appellant, who had stated that his father was a tenant of the acquired land for nearly 30 years till he died in the year 1974. He stated that he had continued as a tenant after the death of his father and had improved the land by spending Rs.20,000/- and also installed a tubewell and constructed a *kotha* thereon. It was his evidence that his father had planted three *pipal* trees worth Rs.5,000/- to Rs.6,000/- and at the time of acquisition, there were crops of the value of Rs.60,000/- to Rs.65,000/-. The tenant claimed that the owners themselves had not reserved their lands as required for personal cultivation and the petitioner had a right to purchase the tenanted premises under the Punjab Security of Land Tenures Act. He had also tendered into evidence the copies of jamabandi (Ex.R1 to R4) and khasra girdwari

(Ex.R5 and R6) in evidence of his possession and personal cultivation of the property. The landlord had contested the appellant's claim on the ground that when he was responding to a notice under Section 9, he did not make any claim in relation to share of any compensation that was only asking for. He contended that the property belonged to the respondents along with 6 other persons and no part of it could be treated as surplus. Opposing the claim of the tenant for the value of the trees, originally the landlords contended that the trees had been planted more than 150 years back by their predecessor.

(3) Dealing with the contentions of parties of whether the appellant had made a claim in relation to the shares of compensation payable for the property, the Court held that it had summoned the original records and found that the petitioner's claim for half share of the amount paid for his alleged tenancy right seemed to have been interpolated. He found the ground for rejecting the claim of the tenant that since he had no made any claim for compensation for the tenancy rights, he had forfeited such a right and he cannot make such a claim. Dealing with the issue of whether the tenant had a right to purchase the property under Section 18 of the Punjab Security of Land Tenures Act, the Court found that there was nothing to show the landlords were big landlords and the property was liable for sale in favour of the tenant. The Court found as a matter of fact that the tenant and his father had been in possession since 1952-53, but there was no proof that the land could be claimed as a matter of right to be purchased being not included in the reserved area of the landowners. The landlord had contended that the tenant could have, if at all, exercised his right of purchase within a period of one year from the date of commencement of Punjab Land Reforms Act of 1972 which came into effect on 02.04.1973. The limitation to apply for the purchase expired on 02.04.1974 and, therefore, the tenant cannot press for such a right before acquisition proceedings, when the notification for acquisition had been made as late as on 03.11.1978. This objection was upheld by the Court below to uphold the contention of the landlord and to deny to the tenant any share of the compensation.

(4) I have had the benefit of going through the original files and I find that the tenant has moved an application on 08.05.1979 before the Collector making a specific claim for the share in the acquired land for his tenancy rights. The reference by the Collector to the Court itself has been made only subsequently on 20.04.1981. Even in the order of reference by

the Collector, there is a specific reference to the fact that the tenant has submitted his application for reference under Section 18/30 that he is cultivating his land since more than 30 years and that he is entitled to the tenant's share of compensation.

(5) The learned counsel relies on a judgment of the Hon'ble Supreme Court in **Meher Rusi Dalal versus Union of India and others (1)**, which lays down that if the tenant does not make a claim to the notice under Section 9, he will be barred from seeking a reference. The facts in that case were totally different, but I do not propose to dwell at length on the same only because in this case I have satisfied myself that the tenant did make a claim before the Collector that he was entitled to compensation as a tenant and even the order of reference made in the year 1981 by the Collector specifically records the fact that the tenant had claimed tenancy rights for more than 30 years and, therefore, the reference was being made under Section 30. It is not possible for me to ascertain whether the value of the crops raised and the value of the trees had been specifically granted to the tenant but the claim of the tenant could never have been rejected on the ground that he had restricted his claim only to the value of the crops and the trees and not in respect of the value of the property itself as a financial recompense for his tenancy rights.

(6) When the tenant was contending that he was entitled to a right of purchase under Section 18 of the 1953 Act, the question could have been whether the petitioner had lost the right by not applying to the Court within time. The learned counsel for the respondent relies on a judgment of this Court in **Bihari Lal versus Harinder Singh and others (2)**, that dealt with a case of a tenant had applied for purchase of the property under Section 18 of the Punjab Security of Land Tenures Act, but before an order had been passed, the property came to be acquired under the Land Acquisition Act, the Collector cannot take the property as belonging to the tenant by the only fact that an application had been filed and pending under the 1953 Act. The Court was considering the question of whether the Assistant Collector could pass an order under Section 18 of 1953 Act to allow the property to be claimed by a tenant vis-a-vis the dominant right of the Government to acquire the property. This is not the issue before the Court. The issue is only one of apportionment and this Court in **Bihari Lal's case (supra)** said that it would be appropriate to apportion the

(1) JT 2004 (5) SC 129

(2) AIR 1977 P&H 165

compensation between a tenant and the landowner in the ratio of 1:3, taking particular note of the fact that even the provisions of Section 18(3) of the Punjab Security of Land Tenures Act prescribed the purchase price to be paid by the tenant at 3/4th of the value of the land as determined by Section 18(2) and, therefore, the interest of the landowner while considering such a right could be assessed at 3/4th. There have been subsequent decisions as well of this Court and of the Hon'ble Supreme Court that provided for a 1/3rd share for a tenant's right would be appropriate. The rejection of the tenant's claim for the compensation awarded was unjust and the tenant was entitled to 1/3rd share of the compensation as determined with interest accrued thereon.

(7) Accordingly, I allow the appeal and apportion to the tenant/appellant a 1/3rd share in the compensation. It is informed that the landlord had already claimed a half share and the remaining half share has been deposited with the credit of the case before the lower Court. The tenant is entitled to withdraw 1/3rd of the total compensation amount with a like share in the accumulated interest and the rest of the amount lying in deposit will be paid to the landlord/private respondents.

(8) The appeal is allowed to the above extent.

M. Jain

Before Nirmaljit Kaur, J.

MOHAMMAD ISRAIL,—Petitioner

versus

STATE OF HARYANA & OTHERS,—Respondents

CWP No. 9507 of 2008

14th September, 2011

Constitution of India, 1950 - Art. 226/227 - Haryana Aided Schools (special Pension & Contributory Provident Fund) Rules, 2001 - Rl. 11 (1) - Petitioner issued order of compulsory retirement under the Rules - No enquiry held - Appeal dismissed - Writ filed challenging order of compulsory retirement - Since no enquiry held that impugned order is punitive and stigmatic and cannot be sustained - Writ allowed.