

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LA.APP. 98/2007

GAON SABHA KAKROLA Appellant
Through: Mr.Rakesh Tiku with
Ms. Aruna Tiku, Advocates

versus

SARBATI & ANR. Respondents
Through: Mr.B.D. Sharma and
Mr.M.P. Siddiqui, Advocates for
respondent No.1.
Mr.Sanjay Poddar, Adv.
for respondent No.2.

+ LA.APP. 99/2007

GAON SABHA KAKROLA Appellant
Through: Mr.Rakesh Tiku with
Ms. Aruna Tiku, Advocates

versus

MANGE RAM & ANR. Respondents
Through: Mr.B.D. Sharma and
Mr.M.P. Siddiqui, Advocates for
respondent No.1.
Mr.Sanjay Poddar, Adv.
for respondent No.2.

+ LA.APP. 102/2007

GAON SABHA KAKROLA Appellant
Through: Mr.Rakesh Tiku with
Ms. Aruna Tiku, Advocates

versus

FATEH SINGH & ANR. Respondents
Through: Mr.B.D. Sharma and
Mr.M.P. Siddiqui, Advocates for
respondent No.1.

Mr.Sanjay Poddar, Adv.
for respondent No.2.

% **DATE OF DECISION**
28.08.2008

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported
in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. At the outset, learned counsel for the appellant states that inadvertently Union of India was not impleaded as a proforma respondent.
2. At an oral application filed, Union of India is impleaded as respondent No.2. Amended memo of parties filed is taken on record.
3. Issue notice to Union of India. Mr.Sanjay Poddar, Advocate who is present in person has been requested to accept notice for Union of India. Counsel accepts notice for

Union of India.

LA.APP No.98,99 and 102 of 2007

1. Heard learned counsel for the parties. The appeals are being disposed of with consent of parties without awaiting the Trial Court record.
2. For purpose of the disposal of the above appeals, learned counsel for the parties state that the narration of facts and conclusions drawn there from by the learned Reference Court may be treated as correct and binding between the parties.
3. A simple issue arises for consideration. Whether, on the admitted facts, compensation apportioned between the Gaon Sabha of village Kakrola and the first respondent(s) in the ratio of 25% : 75% is correct.
4. All the appeals relate to land comprised in the revenue estate of village Kakrola. The lands in village Kakrola were acquired under the Land Acquisition Act, 1894. When acquisition took place, disputes were pending between Gaon Sabha of village Kakrola and the respondent(s) No.1 as also a few other persons who are not before us today.
5. Disputes related to a claim of the respondent(s) No.1 (originally filed before the Revenue Assistant) for being

declared Bhumidar of certain lands which were acquired. The respondent(s) No.1 claimed, that in the year 1976, under the 20 Point Programme of the Government of India, that uncultivated land belonging to the Gaon Sabha of village Kakrola was allotted to them to be reclaimed and that having reclaimed the land, they had initiated action under Section 74(4) of the Delhi Land Reforms Act, 1954 to be declared Bhumidhar of the land. So stating, it was claimed by these persons that if they were declared to be the Bhumidhar of the land, entire compensation pertaining to the acquired lands would fall to their share. Per contra, the stand of the Gaon Sabha was that none of the respondent(s) No.1 were declared a Bhumidhar of the land and that the Gaon Sabha continued to be recorded as the Bhumidhar thereof and hence would be entitled to a major share of the compensation.

6. At this stage, it would be relevant to note that with a view to abolish the Zamindari system in Delhi, the Delhi Reforms Act 1954 was promulgated on 24.7.1954. Not only was the Zamindari system abolished but a system of tenure holding was brought into force intending to vest hereditary rights in the tiller of the land.

7. 2 kinds of tenure in holdings were recognized by

the Act. The first was a Bhumidhari right and the second was an Asami right. Section 4 of the Delhi Land Reforms Act 1954 so stipulates.

8. Who would be entitled to be declared a Bhumidhar and who would be entitled to be declared an Asami when Delhi Land Reforms Act, 1954 was promulgated finds mention in Section 5 and Section 6 respectively of the said Act.

9. The rights of a Bhumidhar and Asami stand listed under Sections 22 to 47 of the Delhi Land Reforms Act, 1954.

10. Suffice would it be to record that there is a difference in the right of a Bhumidhar and the right of an Asami. Three essential attributes attach to the rights of a Bhumidhar; being (1) permanency of tenure; (2) hereditary character of the tenure; and (3) transferability of the tenure. As against that, an Asami gets a lesser right. Permanency of an Asami relates to the term of the grant (patta). It is a non-transferable right. The right is hereditary but only for the remainder of the period of the grant (patta) on the death of the Asami. Reference may be made to Section 32 and Section 68 of the Delhi Land Reforms Act, 1954 to ascertain the rights of an Asami.

11. Reverting to the facts of the instant appeals,

admitted position is that the claims of the respondent(s) No.1 for being declared Bhumidhar required adjudication under Section 74(4) of the Delhi Land Reforms Act. Necessarily, in terms of the mandate of Section 74(4) of the said Act the respondent(s) No.1 had to prove their entitlement for being declared a bhumidhar after leading evidence. Similarly, the Gaon Sabha had a right to lead evidence to rebut the evidence led by the respondent(s) No.1. Sub-sections (1) and (4) of Section 74 of the Delhi Land Reforms Act 1954 read as under:-

“74. Admission to land mentioned in sub-clause (iii) of clause (a) of section 6 or to waste land for reclamation – (1) The Gaon Sabha shall have the right to admit any person as Asami to any land falling in any of the classes mentioned in sub-clause (iii) of clause (a) of section 6 where-

- (a) the land is vacant land,
 - (b) the land is vested in the Gaon Sabha, or
 - (c) the land has come into the possession of the Gaon Sabha under Section 72 or under any other provisions of this Act.
- (2)
- (3)
- (4) At the end of five years, the Gaon Sabha shall report to the Revenue Assistant the extent

to which reclamation has been made. The Revenue Assistant shall, after necessary enquiry and after hearing the Asami, either order the termination of the lease and his ejectment if there has been no reclamation or extend his lease for another period of two years. If, however, the land has been duly reclaimed during the period of five years or the extended period, the Revenue Assistant shall direct the Gaon Sabha to admit the Asami as Bhumidhar under Section 73. The Asami on his admission as Bhumidhar shall be liable to pay such land revenue as shall be equal to 50 per cent of the rent calculated at the prevailing village rate of rent together with cesses and local rates, but he shall not be liable to pay any compensation."

12. It is apparent that when the acquisition proceedings resulted in the acquisition of the land commenced, the adjudicatory process contemplated by the Delhi Land Reforms Act, 1954 before the Revenue Assistant got interdicted.

13. What fell to the lap of the Reference Court under Section 30/31 of the Land Acquisition Act, 1894 was the issue of apportionment of the compensation which necessarily had to be decided on the claims at the stage when the land got acquired, requiring the Reference Court to determine the apportionment of the compensation.

14. Various factors are incorporated in a decision relatable to apportionment of compensation. We do not intend to list the same as they are incapable of being put in a strait-jacket.

15. Suffice would it be to note that as a bhumidar of a land, when Gaon Sabha admits a person as an Asami under Section 74(1) of the Delhi Land Reforms Act 1954, the tenure of Asami is 5 years requiring land to be reclaimed within said 5 years and reclamation proved as a condition for conferring bhumidari right in the Asami with simultaneous extinguishment of the bhumidari right of the Gaon Sabha. Needless to state if the Gaon Sabha succeeds in proving that the land was not reclaimed, the right of the Asami lapses and possession reverts to the Gaon Sabha.

16. But, with the acquisition of the land, the adjudicatory process being aborted, entitlement to receive the compensation awarded by the Land Acquisition Collector has to be decided giving weightage to the respective claims.

17. Noting a decision of the Hon'ble Supreme Court reported as 1994 (V) SCC 239 Inder Prasad Vs. UOI, the learned Reference Court has apportioned compensation in the ratio of 25% : 75% between Gaon Sabha and the respondent(s) No.1.

18. The decision in Inder Prasad's case (supra) related to apportionment of compensation between the Union of India as a lessor and Inder Prasad as a perpetual lessee.

19. The decision in Inder Prasad's case (supra) has, in our

opinion, been wrongly applied by the learned Reference Court for the reason in said case the rights of the parties were crystallized as a lessor and a perpetual lessee. Apportionment related to the lessor losing title and hence the right to receive the rent as per the lease. The perpetual lessee lost possessory rights. In said situation, apportionment had obviously to be factored on capitalization of the rent which the lessor lost and same to be paid over to the lessor from out of the compensation determined and the remainder to be paid to the perpetual lessee.

20. On the issue at hand, we are guided and instructed by a decision of a co-ordinate bench of this Court reported as 117 (2005) DLT 588 (DB) Moti Lal Jain Vs. Mukhtiar Singh.

21. In Moti Lal Jain's case (supra) the Division Bench of this Court was considering the issue of apportionment between a Bhumidhar and a non-occupancy tenant under the Punjab Land Revenue Act, 1887 whose claim for being declared an occupancy tenant was pending when the subject land of the said case was acquired.

22. The Division Bench held that the apportionment had to be in the ratio of 40% : 60% between the owner and the non-occupancy tenant claiming right to be declared as an

occupancy tenant.

23. The similarity between interest of an Asami and an occupancy tenant may be noted with reference to the provisions of Punjab Tenancy Act 1957. The non-occupancy tenant who gets a declaration of being an occupancy tenant gets a right enumerated under Section 5 of the Punjab Tenancy Act 1887 i.e. a right to hold the land for a certain fixed duration. The right is non-transferable. It is inheritable. As noted in para 10 above, these 3 features are the features of a right in an Asami.

24. We may note a prior decision of a Division Bench of this Court reported as ILR 1977 (2) Delhi 687 Hanuman Perashad etc. Vs Chuni @ Chuni Lal & Ors. In para 10 to 14, following was observed.

“10. The property rights in land are a bundle of rights to use, sell, mortgage and exploit the land. When agricultural land is given to a tenant the owner gives to the tenant the right to exploit the land and use the land. The owner may reserve unto himself the minerals under the land, if permissible under the law, and retains unto himself the right to sell or mortgage the land. If the owner exercises the right of sale or mortgage he would exercise that right subject to the right of the tenant to exploit or use the land. The purchaser or mortgagee in such a case would then step into the shoes of the owner and in his turn would only have such rights as are available to him minus the rights of the tenant. To our mind unless income is derived from the land, mere satisfaction of owning the land is the only other right which the owner has

and it is difficult to translate that right in terms of money. All the same it is a valuable right.

11. In case of statutory tenant or non-occupancy tenant the owner also has the right of reversion available to him as the right to use the land reverts to him on the eviction of the tenant or on the tenancy coming to an end. In the case of statutory tenancy such right of reversion stands postponed to at least the life-time of the statutory tenant or unless one of the contingencies mentioned in clauses (a) to (d) of Section 3(1) occur. As far as apportionment of compensation between occupancy tenants and land-owners is concerned, the ratio adopted by judicial decisions is to give to the tenant from 36 per cent to 80 per cent and the balance to the owner. We have already observed that the rights of the statutory tenant are somewhat less than an occupancy tenant. Therefore, in our view depending upon the circumstances of a case, compensation awarded may even be apportioned half and half.

12. It was urged that a ratio could be worked out between the income of the land to the owner from the tenant, namely, the Malikana or the rent and the income of the tenant. In our opinion, this will not be a safe guide because sometimes the Malikana is very much less in old tenancies and in these days of scientific cultivation the produce of land may fetch much more than the rent that has been agreed upon between the owner and the tenant. Capitalisation of the rent received by an owner may be one of the ways of fixing the compensation to be paid for acquisition and in determining the market value of the land but that does not help in apportionment of compensation or market value determined by the Land Acquisition Collector or enhancement awarded by the District Judge or the High Court. What is to be found out is the value of the tenancy rights.

13. In the present case Shri Chuni and before him his mother and before that his father have been non-occupancy tenants of the land in question and have been cultivating it. It is established on the record that

this family had been cultivating this land since 1934-35. Had the acquisition taken place after the lifetime of Shri Chuni when his son was cultivating the land, that son would have had the same rights as occupancy tenant within the meaning of Section 3 of the Punjab Tenancy Act. The land had been in cultivating possession of Shri Chuni's family for almost 30 years when it was notified for acquisition. A cultivator gets attached to his land, and particularly when he has been in cultivating possession of it for such a long time. Furthermore the tenure of Shri Chuni stood protected by virtue of the Delhi Urban Areas (Tenant Relief) Act, 1961 and but for the intervention of the notification acquiring the land he may well have continued to cultivate it all through his life. Shri Hanuman Pershad and his sons were getting a return of only Rs.25 per year as rent from Shri Chuni and no evidence was led by Shri Hanuman Pershad etc regarding their intention to exercise any other ownership rights than that of receiving rent.

14. Keeping in view the rights of the tiller of the soil, which are now protected, and the rights of the owner-landlord which in the case of a statutory tenant are considerably restricted, the tenant in apportionment proceedings would be entitled to a major portion of the compensation determined by the Land Acquisition Collector. As has been observed by us earlier, occupancy tenant has been awarded as much as 80 per cent of the compensation in apportionment proceedings. Having held that the right of a statutory tenant is somewhat less than that of an occupancy tenant, a fair estimate of share in the compensation for a statutory tenant would be 65 per cent."

25. The decision in Hanuman Prasad's case (supra) also follows a principle which was followed by a Division Bench in Moti Lal Jain's case (supra) and brings out additional jural reasons for apportionment.

26. We dispose of the appeals modifying the apportionment effected vide impugned orders dated 15.11.2006 in LAC No.13/02, LAC No.14/02 and LAC No.17/02 by directing that the compensation determined on acquisition of the subject land would be apportioned in the ratio 40% : 60% in favour of the Gaon Sabha and the respondent(s) No.1 respectively in each case.

27. There shall be no order as to costs.

PRADEEP NANDRAJOG, J.

SUNIL GAUR, J.

AUGUST 28, 2008
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