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1.

Premwati

through :

VERSUS

Union of India & Anr.

through :

2.

Jage Ram

through :

VERSUS

Union of India & Ors.

through :

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

1. Whether Reporters of Local newspapers may be allowed

2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The Government acquired certain lands in village Chandrawali, Delhi, now known as Makki Sarai, Railway Road, Shahdara, Delhi for the construction of Metro Rail by the Delhi Metro Rail Corporation (DMRC). Land Acquisition Collector (LAC) rendered his Award No. 1/1990-2000/Chandrawali/Shahdara. Thereafter, he remitted a sum of Rs.18,48,55,526/- to the Addl. District Judge, Delhi along with reference under Sections 30 & 31 of the Land Acquisition Act, 1898 (for short, the 'Act') for apportionment of the said amount among the disputed parties. The claimants were very large in number and we are not concerned with all of them. Vide the impugned judgments dated 28.1.2008 and 30.1.2008, the learned ADJ has decided the cases of two such claimants, who were IP No. 360 and 362 respectively. By reason of those judgments, claims of both these interested persons, who are husband and wife, have been rejected holding that they are not entitled to any compensation. Aggrieved by these judgments, which deal with identical issues, under almost identical circumstances, these two appeals are preferred by them.
2. The appellants filed their claim before the LAC stating that they were the owners and in possession of built up property, including the land underneath and superstructure of property No. 1022-B (Old No. 12), Makki Sarai, Railway Road, Shahdara, Delhi. According to them, late Smt. Dhan Kaur, mother of the appellant Jage Ram, had purchased

the property measuring 160 sq. yds. with two rooms situated in khasra No. 447 of Village Chandrawali, whose recorded owner was one Mohd. Abdul Samad, s/o. Mohd. Abdul Gani. The property was sold by Mohd. Abdul Samad, purportedly through his attorney Shri Jagdish Singh, on 10.5.1962 vide Sale Agreement and Power of Attorney. Physical possession of the said property was given to Smt. Dhan Kaur. Smt.Dhan Kaur executed Will in favour of the appellant on 10.1.1974, which was registered with the Sub-Registrar, Delhi. She died on 10.2.1974 and in this manner the appellant became owner of this property. They got the said property mutated in their name in the records of the House Tax Department, MCD in the year 1975.

3. The appellants also claimed that thereafter they made a request to Shri Jagdish Singh, attorney of Mohd. Abdul Samad, to execute proper sale deed in their favour, but he avoided. In these circumstances, as per Agreement to Sell dated 10.5.1962, the matter was referred to Shri Harbans Lal, Arbitrator, who passed the award in their favour and it was made rule of the Court as well on 23.11.1979. In spite of this decree, Shri Jagdish Singh did not execute the sale deed, though amount of Rs.1,000/- was paid as per the orders of the Court. As sale deed could not be registered due to prohibition by the Government, Shri Jagdish Singh executed a power of attorney on 15.9.1980 along with a receipt. The appellants raised construction and started a restaurant under the name of style of 'M/s. Hidden Palace Restaurant' on 150 sq.yds. of land. This restaurant

was being run after obtaining proper licences from the MCD and Delhi Police in the year 1989. The appellant also constructed a Mandir on the land measuring about 60 sq.yds. in the memory of their ancestors and named it as 'Shiv Mandir'. According to the appellant, LAC had partly acquired about 40 sq.yds of the property from the said restaurant along with construction and 23 sq.yds. from the land where temple existed. Thereafter, entire restaurant and temple were demolished. Compensation was assessed but not given to the appellant as the LAC opined that there was a dispute about the entitlement and/or apportionment of the compensation assessed in respect of the aforesaid land.

4. The dispute about the purported ownership of the appellant had arisen under the following circumstances: Mohd. Abdul Samad, who was the original owner of the land, had, on the partition of the country, migrated to Pakistan. The question was as to whether the property is vested with the Custodian of Evacuee Property Department under the Administration of Evacuee Property Act, 1950 or Mohd. Abdul Samad had executed a valid General Power of Attorney in favour of Shri Jagdish Singh, who had, on the strength of the said Power of Attorney, sold the property in question to Smt. Dhan Kaur.
5. While answering the reference, the learned ADJ has held that the alleged POA dated 14.12.1947, purportedly executed by Mohd.

Abdul Samad in favour of Shri Jagdish Singh, is not a valid document inasmuch as said POA (Mark-A) was the photocopy of document attested by some notary on 29.8.2003. The power of attorney was not registered. He also noted that the contents of power of attorney reflect that Abdul Samad was resident of Meerut on 14.12.1947 and bequeathed all his rights in respect of land in question. Thus, in the garb of power of attorney the transaction was that of sale of property. However, no sale deed ever executed in favour of Jagdish Singh. Moreover, Mark-A was only a photocopy. The original was not produced. Mark-A was not duly executed and proved as per law, therefore, it has no legal sanctity.

6. Thus, in the opinion of the learned ADJ, though this document suggests that in the garb of the said POA, the transaction is the sale of property, no sale deed was ever executed in favour of Shri Jagdish Singh. He also found that agreement to sell dated 10.5.1962 executed by Shri Jagdish Singh in favour of Shri Dhan Kaur was also not registered. Further, though Smt. Dhan Kaur had allegedly executed Will dated 10.1.1974 and died within one month thereafter, from May 1962 to till her death or after her death for four years, no dispute had taken place. The parties never made any effort for registration of the sale.

7. From the aforesaid, the learned ADJ held that the original owner Mohd. Abdul Samad never transferred his land to any person and

Smt. Dhan Kaur never became legal owner of the land in question on the basis of documents executed with Shri Jagdish Singh. Therefore, he could not bequeath the land in favour of the two appellants. The learned ADJ further found that as per the revenue record and the proceedings taken out by the Custodian of Evacuee Property, the land had vested with the Custodian of Evacuee Property in view of orders dated 23.5.1955 (Ex.DW-1/1) passed in this behalf by the Custodian, which orders were never challenged before any legal forum by any of the parties. On this basis, issues have been decided against the appellants holding that they had no right, title or interest in the land in question and, therefore, they are not entitled to any compensation for the acquired land.

8. Mr. Lahoty, learned counsel appearing for the appellants, submitted that the entire approach by the learned ADJ in the cases at hand was contrary to law, and not keeping in view the provisions of the Evacuee Property Act, 1950 as well as the Delhi Land Reforms Act, 1954. He based his challenge as under :-

- (a) As far as Ex. DW-1/1, which is an order dated 23.5.1955 passed by the Assistant Custodian declaring the property belonging to Mohd. Abdul Samad as an evacuee property, is concerned, it was passed on factually incorrect basis, i.e. on the wrong premise that ground that Mohd. Abdul Samad had migrated to Pakistan in September 1947. According to the learned counsel, he left India only in the year 1960-61 and entry to that effect

had been made in Jamabandi, which was clear from copy of Jamabandi of the year 1960-61. He also submitted that in any case said order was contrary to the provisions of Section 7-A of the Administration of Evacuee Property Act, which clearly provided that on or after 7.5.1954, there could not be any order declaring a property as an evacuee property, and was thus without jurisdiction.

- (b) Insofar as rights of the appellants are concerned, what was not in dispute was that Smt. Dhan Kaur, on the execution of the agreement to sell dated 10.5.1962 in her favour (which was duly notarized on 12.5.1962) possession of the land was given to her. Land was covered by the provisions of the Delhi Land Reforms Act, 1954. From 1962 till her death in 1974, she was in possession. The appellants, being son and daughter-in-law of Smt. Dhan Kaur, were living with her and continued to remain in possession till the date of acquisition of the property. They had, therefore, acquired the bhoomidari rights under the Delhi Land Reforms Act in view of the said settled position and, therefore, had right to receive the compensation.
- (c) Even otherwise, argued the learned counsel, on the basis of agreement to sell, arbitration award was passed, which was made rule of the Court and decree followed thereupon. As per this decree, Smt. Dhan Kaur had become the owner of the

house. It was, therefore, not proper on the part of the learned ADJ to hold that she had no right, title or interest in the land in question nor she could pass the same by means of Will in favour of the appellants.

9. Learned counsel for the respondent supported the impugned judgment on the basis of reasons given therein.
10. When the arguments in this case were heard on 4.12.2008, both the parties were given one week's time to file the written submissions, as desired by them. Counsel for the respondent No.2, namely, L&DO had brought the record which contains orders dated 23.9.1955 passed by the Assistant Custodian. Counsel for respondent No.2 was directed to handover the said record along with the written submissions. However, neither the appellant nor the respondents have filed any written statement. Original record is also not given. Therefore, we proceed on the basis of the oral arguments advanced before us as well as the record available with us.
11. Insofar as order dated 23.5.1955 passed by the Assistant Custodian is concerned, it is admittedly an *ex-parte* order. There is a dispute as to whether Mohd. Abdul Samad left for Pakistan in September 1947 or he migrated to Pakistan in 1960-61. However, it may not be necessary to dwell on this aspect inasmuch as there was legal embargo for the Assistant Custodian to pass any such order after

7.5.1954. Provisions of Section 2(d)(i) and Section 7-A of the Administration of Evacuee Property Act, 1950, which are relevant for us, directly provide necessary answer, namely, the purported order dated 23.5.1955 is without jurisdiction and, therefore, null and void.

These provisions are as under :-

“2(d) “evacuee means any person –

(i) who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, leaves or has, on or after the 1st day of March, 1947, left, any place in a State for any place outside the territories now forming part of India, or

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7-A Property not to be declared evacuee property on or after 7th May, 1954. – Notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954:

Provided that nothing contained in this section shall apply to –

(a) any property in respect of which proceedings are pending on the 7th day of May, 1954, for declaring such property to be evacuee property; and

(b) the property of any person who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances had left on or after the 1st day of March, 1947, any place now forming part of India, and who on the 7th day of May, 1954, was resident of Pakistan :

Provided further that no notice under Section 7 for declaring any property to be evacuee property with reference to Cl. (b) of the preceding proviso shall be issued after the expiry of six months from the commencement of the Administration of Evacuee Property) Amendment Act, 1954 (42 of 1954).

Explanation I. – A person shall be deemed to have been resident in Pakistan on the 7th day of May, 1954, within the meaning of Cl.(b) of the first proviso, if he was ordinarily residing in Pakistan before that date, notwithstanding that he was temporarily absent from Pakistan on that date.

Explanation II. – A person who had left India for Pakistan before the 7th day of May, 1954, on the authority of a passport

or any other valid travel document issued by any competent authority in India, and who was temporarily residing in Pakistan on that date, shall not be deemed to have been resident in Pakistan on that date within the meaning of Cl. (b) of the first proviso.

Explanation III. – A person who had left Pakistan for India on or after the 18th day of July, 1948, and who was in India on the 7th day of May, 1954, shall, unless he came to India under a valid permit for permanent return or for permanent resettlement, issued under the Influx from Pakistan (Control) Act, 1949 (23 of 1949), be deemed to have been resident in Pakistan on the 7th day of May, 1954, within the meaning of Cl.(b) of the first proviso.”

12. There was no question of challenging order dated 23.5.1955 which remained *ex-parte* and was never brought to the notice of any person. What is interesting to note is that even the Custodian Department did not act upon that order inasmuch as after declaring the property as evacuee property, the same should have been disposed of by the Evacuee Department in the manner provided in the said Act. No such steps were taken. On the contrary, Smt. Dhan Kaur, who came to occupy the property in question, remained in possession thereof till her death and thereafter her LRs. Thus, no rights were sought to be enforced by the Evacuee Department on the basis of the said order.
13. The important question is the determination of the rights of the appellants under the given circumstances. No doubt, the original power of attorney dated 15.9.1980 purportedly executed by Mohd. Abdul Samad in favour of Shri Jagdish Singh has not been produced and only copy of the said power of attorney was produced. Fact

remains that on the basis of agreement to sell executed by him in favour of Smt. Dhan Kaur there was an arbitration award, which was even made Rule of the Court. May be if the Evacuee Department or Government is the owner of the property, such an award would not bind the Government. However, if we proceed on the basis that Mohd. Abdul Samad remained the owner of the property, it is only he or Shri Jagdish Singh, at the most, who could question the award and the decree. However, Shri Jagdish Singh even acted on the decree by executing further power of attorney, though proper sale deed could not be executed. At the same time, it is also to be borne in mind that name of the appellants was entered in the revenue record in Jamabandi/Khasra Girdawari in 1976, which continued even thereafter as per the documents produced by the appellants. The appellants have also produced documents which show that they have been regularly paying house tax, income tax, sales tax, commercial electricity bills, residential electricity bills, commercial water bills, residential water bills and development charges to the MCD and DESU from 1976 to 2003. All these documents cannot be wished away as they would at least prove the settled possession of the appellants and their predecessor-in-interest Smt. Dhan Kaur. Thus, even if there is no sale deed in favour of Smt. Dhan Kaur, on the basis of which she could establish her ownership in the land, her interest in the land remained, in view of the possessory rights of a land which is agricultural land and covered by the Delhi Land Reforms Act.

14. All these aspects are not considered by the learned ADJ and, therefore, we agree with the submissions of learned counsel for the appellants that the approach adopted by the learned ADJ is not correct in law. In view thereof, these appeals are allowed, the impugned judgments of the learned ADJ are set aside and it is held that the appellants shall be entitled to compensation of the land in question, as determined by the LAC. If any reference under Section 18 is sought by the appellants for further enhancement of compensation, the payment shall be subject to the outcome of the said reference. The compensation, as determined, shall be paid to the appellants by the Reference Court. The appellants shall also be entitled to costs of these appeals.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

January , 2009
nsk

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LA.A. No. 559 of 2008

% *Reserved on : December 04, 2008*
Pronounced on : January 09, 2009

Jage Ram . . . Appellant

through : Mr. M.L. Lahoty with
Mr. Paban K. Sharma, Advocates

VERSUS

Union of India & Ors. . . Respondents

through : Mr. Sanjay Poddar, Advocate
for the respondent No.1/LAC.
Mr. Sanjay Pathak, Advocate
for the respondent No.2.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
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For orders, see LA.A. No. 558/2008.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

January 09, 2009
nsk