

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

% **RFA NO. 937 OF 2003**

+ Date of Decision: 8th December, 2010

UOI ...Appellant

! Through: Mr. Sanjay Poddar, Advocate

Versus

\$ **VIJAY KUMAR GUPTA** ...Respondent

^ Through: None

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment? (No)
2. To be referred to the Reporter or not? (No)
3. Whether the judgment should be reported in the digest? (No)

JUDGMENT

P.K.BHASIN, J (Oral):

This appeal was filed by Union of India, Ministry of Rehabilitation through Evacuee Property Cell, Land & Building Department, Government of National Capital Territory of Delhi against the judgment dated 3rd March, 2003 passed by the learned Additional District Judge whereby reference made by the Land Acquisition Collector under Sections 30-31 of the Land Acquisition Act, 1894 in respect of some land in village Kureni was disposed of and the appellant was awarded only 15% of the

compensation amount while the respondent herein was awarded 85%.

2. The reference came be to made by the Land Acquisition Collector after he had passed the award no. 4/95-96 and total compensation amount in respect of the acquired land had been assessed at ₹ 7,07,750. Since the said compensation amount was being claimed by the Custodian under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Administration of Evacuee Properties Act, 1950 as the acquired land was claimed to be an evacuee property, as well as the respondent herein, the Land Acquisition Collector made a reference to the District Judge under Sections 30 & 31 of the Act of 1894. The respondent had claimed the compensation on the ground that he had become non-occupancy tenant in respect of the acquired land because of his having been in cultivatory possession uninterruptedly for many years before the issuance of the notification under Section 4. While making the reference the Land Acquisition Collector had in the memorandum of reference mentioned the names of Central Government, the respondent as well as the name of the allottee of the acquired land, namely, Asa Nand through Nanhey and Lakhi, as the interested persons.

3. It appears from the Reference Court's record that on receipt of the

reference when the matter was taken up by the learned Additional District Judge on the first date on 5th August, 1999 notice was ordered to be issued only to the Central Government, Ministry of Rehabilitation, Jam Nagar House, New Delhi since the respondent had appeared on his own on that date through his counsel. Both these claimants had filed their respective claims before the Reference Court and the Reference Court framed the following issues for its decision:-

1. Whether the IP No. 2 was the non-occupancy tenant of the premises in question, if so, its effect?
2. To what amount each of the IPs is entitled to compensation for the acquired land?
3. Relief.
4. Vide impugned judgment the learned Reference Court held the respondent herein to be a non-occupancy tenant in respect of the acquired land entitled to 85% of the compensation and while the Central Government was held entitled to remaining 15%. The Central Government felt aggrieved by this apportionment of compensation and, therefore, filed the present appeal.
5. During the pendency of the proceedings before the Land Acquisition Collector both Nanhey and Lakhi, whose names figured in the Reference made by the Collector, died and after the Land Acquisition Collector

passed his award no. 4/95-96. Their sons made a petition under Section 18 of the Land Acquisition Act claiming enhancement in compensation.

6. The sons of Nanhey and Lakhi had filed an application for their impleadment in the appeal in which they had claimed that in response to the notices under Sections 9 and 10 of the Land Acquisition Act they had submitted their respective claims and objections but on receipt of the reference under Sections 30 and 31 the Reference Court did not send any notice to them as interested persons and in the absence of any notice of the reference having been given to them the reference came to be disposed of by the Reference Court vide impugned judgment. It was also claimed that that judgment had been obtained by the respondent herein at their back by concealing and suppressing the material facts about their entitlement in respect of the compensation of the acquired land. This Court had vide order dated 31st October, 2007 allowed that application and the applicants were permitted to be impleaded as respondents no. 2, 3 and 4 in the present appeal. While ordering their impleadment this Court had observed that they had not only participated in the award proceedings but had also got a reference made under Section 18 for enhancement of compensation.

7. From the aforesaid narration of the factual background of the case leading to the filing of the present appeal it becomes apparent that the Reference Court had proceeded to dispose of the reference in the absence of some of the interested persons whose names were mentioned by the Land Acquisition Collector in the Reference and that appears to have happened because on the first date itself when the reference was taken up respondent no. 1 herein had appeared in the matter through counsel. In my view, the Reference Court was not justified in deciding the question of apportionment of compensation in the absence of all the interested parties and therefore, on this short ground alone the impugned judgment deserves to be set aside. This Court feels that in the facts and circumstances narrated above, a re-trial is necessary by the Reference Court after inviting claim from respondents 2 -4 herein and giving them opportunity of adducing evidence. Ordered accordingly.

8. Since the impugned judgment is being set aside only on the ground that it had been passed in the absence of some of the interested persons, this Court has not gone into the merits of the rival claims of the parties which were there before the Reference Court and their claim shall also be re-determined by the Reference Court in accordance with law uninfluenced by the passing of the present judgment of remand and they

shall also be entitled to adduce additional evidence, if they so desire. The appeal stands disposed of accordingly.

9. The case shall now be taken up by the Reference Court on 12th January, 2011. The trial Court record be sent back.

P.K. BHASIN,J

December 08, 2010/pg