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IN THE HIGH COURT OF DELHI AT NEW DELHI

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L.A. APP. No.17/2016 and C.M. No.724/2016 (stay)

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27th September, 2016

SH. SURENDER SINGH @ SUNDER & ORS.

..... Appellants

Through: Mr. V.P. Rana, Advocate.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Jyoti Tyagi, Advocate for respondent
no.1.

Mr. Avinash N. Sharma, Advocate for
respondent no.2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') impugns the Judgment of the Trial Court dated 5.2.2014 by which the trial court has allowed the claim petition filed by the objector/Smt. Padmavati/I.P. no.4 in the reference proceedings under Sections 30-31 of the Act. The respondent no.2/objector laid a claim to the share in the compensation of the land acquired belonging to her father late Sh. Randhir Singh on the ground that she is his daughter and hence a legal heir of her father late Sh. Randhir Singh and thus entitled to compensation as payable to a legal heir. The trial court, in view of the fact that the present

appellants/IP nos. 1 to 3, brothers of the IP no.4/Smt. Padmavati, did not contest the proceedings by filing a reply to the objection petition of the objector/respondent no.2 and thus they also did not lead evidence, hence allowed the claim petition filed by the objector/respondent no.2.

2. The relevant paras of the judgment of the trial court are paras 6 to 8 and which paras read as under:-

“6. The present reference u/s 30-31 of Land Acquisition Act has been referred to this court by the Land Acquisition Collector (West District).

In the instant reference petition, the following issue is required to be determined:

“Which of the IP is entitled to the compensation and to what an extent?”

7. In the present case, the claim petition has been filed only on behalf of IP No.4 Ms. Padmavati (objector).

In order to prove her claim on record, IP No.4/objector Ms. Padmavati has examined herself as IP4W-1 and has filed her evidence by way of affidavit (Ex.IP4W1/A), wherein it has been stated that she was one of the objectors in this case and she has proved the copy of her Voter I-card as Ex.IP4W-1/B. IP4W-1 further deposed that the land belonging to her father i.e. Sh. Late Sh. Randhir Singh was acquired by the Land Acquisition Collector (West) vide Notification No.F.10(35)/04/LB/786 dated 27.04.2006 and F.10(35)/2004/L&B/LAC.11519 dated 23.10.2006 for the purpose of reservoir and booster pump station and that the said land belonging to the IP No.4's father lay under Khasra No.108//10(3-13), 108//11/1 (2-6), 109//6/1 (1-14), 15/2 (2-3) i.e. total land of about 9-16 and according to award by the Land Acquisition Collector (West) bearing no.4/DC(W)/2006-07 dated 25.10.2010, the heirs of late Sh. Randhir Singh are to receive Rs.12,38,722/- only. IP4W-1 deposed that the land of late Sh. Randhir Singh was an undivided property belonging to the legal heirs of late Sh. Randhir Singh and as soon as she came to know about the award, she immediately moved an application to the appropriate authority dated 17.03.2009 and at that time, she came to know that the property has been fraudulently mutated in the name of her brothers i.e. Sh. Surender Singh, Sh. Sumangal Singh and Sh. Niraj Kumar and the said mutation has been affected by playing fraud upon the relevant authorities and she has proved the copy of above said application as Ex.IP4W-1/C. IP4W-1 deposed that she being the legal heir of late Sh. Randhir Singh has share in his still undivided property and is entitled to receive her 1/4th share in the said award and thereafter to pursue her rights for enhancement. IP4W-1 also deposed that

she was an unmarried female and has full right in the undivided property of her deceased father late Sh. Randhir Singh.

The important fact is that the aforesaid witness (IP4W-1) has not been cross examined on behalf of the remaining IPs, who remained absent despite service and the right of the said IP Nos.1 to 3 to file their respective claim petitions has been closed vide order dated 06.11.2012. In these circumstances, the evidence of IP4W-1 has remained uncontroverted and uncontested and I find no reason to disbelieve the said unrebutted evidence of IP4W-1 especially in view of the fact that her evidence has also been corroborated to a large extent by the material on record.

8. Thus in view of the aforesaid discussion & observations and having regard to the fact & circumstances of the instant case, the present reference u/s 30-31 of LA Act is disposed of by holding that the above-named objector/IP No.4 Ms. Padmavati is entitled to receive 1/4th share in the above-mentioned amount of compensation.

Copy of this judgment be sent to the Land Acquisition Collector (West) for information.

File be consigned to record room.” (underlining added)

3. A reference to the aforesaid paras shows that the objector/respondent no.2 proved that she was the daughter of late Sh. Randhir Singh by filing her affidavit by way of evidence and also proving the Voter Identity Card. Also it is not disputed before this Court that objector/respondent no.2 is the daughter of late Sh. Randhir Singh and the sister of the appellants who are the sons of late Sh. Randhir Singh. In law a mutation order does not confer finality to title. Once the appellants have chosen not to contest the claim filed by the objector/respondent no.2 by not filing their replies and leading evidence, there cannot be decided, either by the trial court and much less by this Court, any defence on merits of the appellants disentitling the objector/respondent no.2 to her share in the compensation amount.

4. Counsel for the appellants argues that amendment to Section 6 of the Hindu Succession Act, 1956 is prospective and in this case the father died in the year 2000 and that mutation order in favour of the appellants with respect to the suit/acquired land was carried out in the year 2001 and hence the objector/respondent no.2 had no right to any compensation, however, I cannot agree to such an argument because this argument is an argument of merit and the same was never raised by the appellants by filling any defence to the claim of objector/respondent no.2. Whatever be the defence on merits, be the same one of fact or law, the same has to be taken up as a defence, evidence led and the case accordingly contested, before the defence can be accepted by the courts. Once the appellants have chosen not to lay any defence/written statement to the claim filed by the objector/respondent no.2, and no evidence was led on behalf of the appellants, I fail to understand as to how the appellants can in any manner object to the impugned Judgment dated 5.2.2014 which gives share of the compensation of the land of late Sh. Randhir Singh to the objector/respondent no.2 as the objector/respondent no.2 is admittedly the daughter of late Sh. Randhir Singh. Also, as already stated above, mutation cannot confer title or that such mutation order confers finality to title.

5. An argument was also urged before this Court that under Section 50 of the Delhi Land Reforms Act, 1954 the objector/respondent no.2 had no right, however, once again this is a defence which firstly had to be taken up and

only then the same could have been decided, and, once the appellants took up no defence in writing and did not pursue such defence before the trial court, providence has rightly stepped in to help the objector/respondent no.2/daughter of late Sh. Randhir Singh to get a share in the compensation with respect to the suit/acquired land of her father late Sh. Randhir Singh. Surely, this Court would not like to interject in such providence in favour of the daughter/objector/respondent no.2.

6. Dismissed.

SEPTEMBER 27, 2016

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VALMIKI J. MEHTA, J