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

% *Date of Judgment: 2nd May, 2018*

\+ W.P.(C) 7184/2015
KARAM CHAND (NOW DECEASED) THROUGH HIS LRS
..... Petitioner
versus
UNION OF INDIA & ANR
..... Respondent

\+ W.P.(C) 7188/2015
BRAHAM CHAND ..... Petitioner
versus
UNION OF INDIA & ANR. ..... Respondents

\+ W.P.(C) 7211/2015
KRISHAN PAL & ANR. ..... Petitioners
versus
UNION OF INDIA & ANR. ..... Respondents

\+ W.P.(C) 7249/2015
GIANENDER SINGH & ORS. ..... Petitioners
versus
UNION OF INDIA & ANR. ..... Respondents

Present: Dr.Vijendra Mahndiyan and Ms.Pallavi Awasthi, Advocates for the petitioners in all the matters.
Mr.Yeeshu Jain, standing counsel for the LAC/L&B with Ms.Jyoti Tyagi, Advocate in all the matters.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. *(ORAL)*

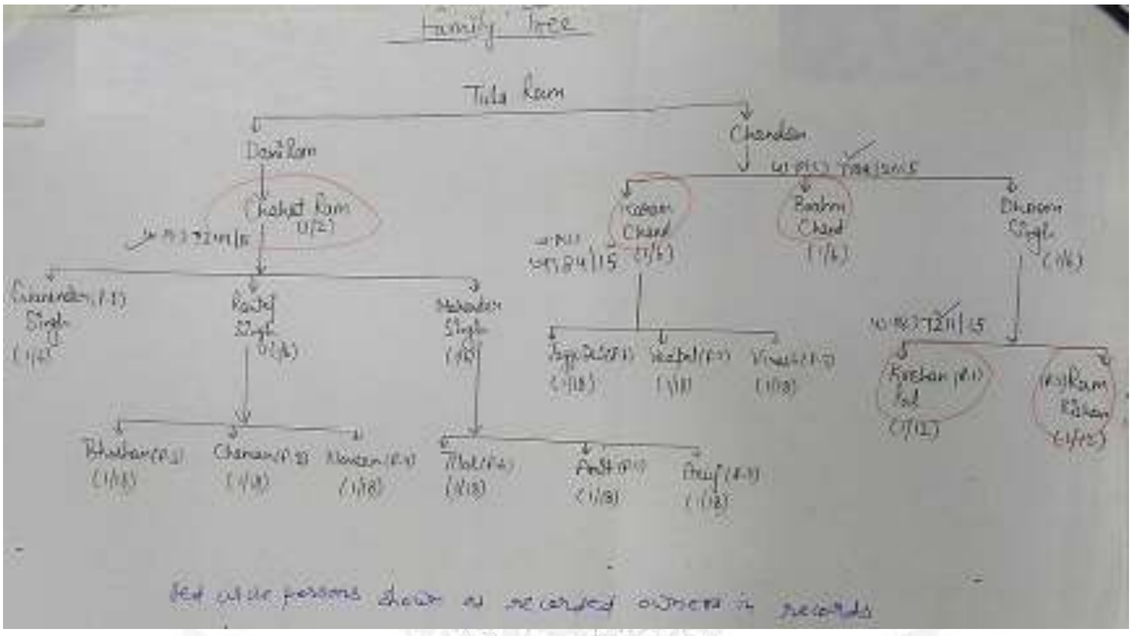
1. Four petitions have been filed by the petitioners under Article 226 of the Constitution of India.

2. Although all the four petitions have been heard separately but for the sake of convenience, they are disposed of by a common order.

3. Rule D.B.

4. For the sake of convenience, the facts of W.P.(C) 7249/2015 are being noticed. The petitioners in W.P.(C) 7249/2015 are residents of Village Jagatpur, Delhi being son/grandsons of Late Sh.Chahat Ram, who was a recorded Bhumidar and in possession of the agricultural land comprised in Khasra Nos.13/1 Min (0-06), 10 min (1-02), 11 Min (1-02), 9 Min (1-14), 12 Min (3-04), 19 Min (3-04), 20 Min (1-03), 21 Min (1-02), 22 Min (3-04), 14/7 (6-18), 14/14 (4-16) and 14/17 (4-16) situated in the revenue estate of village Jharoda Majra, Burari, Delhi. Late Sh.Chahat Ram was the owner of land measuring 16 bighas 5 biswas and on his demise he left behind his sons namely Gyanender Singh, Rantej Singh and legal heirs, namely, Amit, Tilak Singh and Anuj of his pre deceased son Mahender. Sh.Rantej Singh has also expired leaving behind his legal heirs, namely, Chaman Singh, Bhushan Chowdhary and Naveen Chaudhary.

5. A family tree giving the names of the petitioners in all the four petitions and respective shares of the petitioners has been handed over in Court today, which has been duly verified by the counsel for the LAC. We deem it appropriate to scan the chart. The chart is scanned hereinbelow:



6. A notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act) was issued on 24.07.1998 and the land of the petitioners was acquired for the purpose of setting up Dairy Colony Yojna. However, the land was subsequently utilized for different purposes including for the purpose of Bio-diversity Park. The land of the petitioner was acquired by invoking the emergency provisions provided under Section 17 (1) of the Act. A notification under Section 6 of the Act was issued on 04.08.1998. An award was rendered on 03.08.2000. The LAC assessed the market value of the land and awarded compensation @ Rs.11,20,000/- per acre for Block-I (A), Rs.10,80,000/- per acre for Block-II (B) and Rs.8,96,000/- per acre for Block-III (C) land. It is claimed that the land of the co-owners of the petitioner are mentioned against Serial No.30, 35 and 39 of the award. It is the grievance of the petitioner that the LAC ignored the claims of

the petitioners and did not award the necessary claim in accordance with law. It is submitted before us that the land of the petitioners was acquired along with the land of other co-Bhumidars being Karam Chand, Braham Chand, Charan Singh and Kalyan Singh of the same village and a reference under Section 18 of the Act was filed by Karam Chand. Similar reference petitions were filed by Charan Singh and Kalyan Singh but late Sh.Chahat Ram did not file any reference petition. It is the case of the petitioners that the petitioners are entitled to the same compensation as that which was granted by the LAC and thereafter enhanced by the Supreme Court of India as in the case of other co-sharers being Charan Singh, Kalyan Singh, Dev Sharma and Mam Chand.

7. Copy of the award which has been placed on record is relied upon to show that apart from co-owners of Khasras No.13/1, 14/7, 14/14 and 14/17, the petitioners are co-sharers with respect to the land falling in Khasras No.9, 10 and 12 (co-sharers with Charan Singh), Khasra No.19 (co-sharers with Kalyan Singh), Khasra no.11 (co-sharer with Dev Sharma) and Khasras no.20 to 22 (co-sharers with Mam Chand). Reliance is placed on pages 44, 45 and 46 of the paper book in support of this plea.

8. Counsel for the petitioner has placed strong reliance on a judgment of the Division Bench of this Court in ***Smt. Kalawati and Others vs. Union of India and Others*** reported in AIR 2004 Delhi 351 in support of her submission that if a co-owner of the acquired land get enhanced compensation, another co-owner

would be entitled to the same treatment even he did not prefer an appeal or in case his case was not covered under Section 28A of the Act. Mr.Jain, learned counsel appearing for the LAC submits that the petitioners had not been able to show that their co-owners had been granted enhanced compensation with respect to Khasras no.13/1, 14/7, 14/14 and 14/17. However, learned counsel is unable to show as to why the present case would not be covered by the decision rendered in the case of ***Kalawati*** (*supra*) with respect to the other Khasra numbers.

9. We have heard learned counsels for the parties.

10. The petitioners are unable to show any connection between the petitioners and such persons who have been granted enhanced compensation with respect to Khasras no.13/1, 14/7, 14/14, 14/17. However, based on the award to which there is no opposition it is clear that the co-owners pertaining to the Khasras no.9, 10, 11, 12 and 20 to 22 have been granted enhanced compensation by the Supreme Court of India. In the case of ***Kalawati*** (*supra*), the following question was formulated:

> "Whether the respondents can discriminate the land owners/co-owners in the matter of payment of compensation under the Land Acquisition Act in respect of same land of same village acquired under the same notification and same Award."

11. The submissions of the Senior Counsel who had appeared in the case of ***Kalawati*** (*supra*) would also lend clarity to the issue involved in the present writ petition as well, which is noticed in paras 12, 13, 14 of the judgment in ***Kalawati*** (*supra*), the same are reproduced as under:

12. Conscious of the aforesaid legal position, Mr. P.N. Lekhi, learned senior counsel appearing for the petitioners, confined thrust of his submission only on the afore-quoted issue formulated in the writ petition. His submission was that when co-sharer was given higher compensation and land acquired being same in which the petitioners also had undivided interest, the petitioners could not be denied equal treatment. In equity also, it was argued, the function of the Courts was to do substantial justice. Such a treatment the petitioners were entitled to, on the first principles, that a co-owner of the land was entitled to same treatment as given to other co-owner. This principle applied *de hors* the provisions of the Act, was the submission of Mr. Lekhi. In support of this submission, he relied upon the judgment of this Court in the case of *Union of India* v. *Shri Shibu Ram Mittal* (Deceased) by LRs., 76 (1998) DLT 577: 1999 (49) DRJ 166 and that of Apex Court in the cases of *Joginder Singh and others* v. *State of Punjab and another*, (1985) 1 SCC 231, *Bhag Singh and others* v. *Union Territory of Chandigarh through The Land Acquisition Collector, Chandigarh*, (1985) 3 SCC 737, *A. Viswanatha Pillai and others* v. *The Special Tehsildar For Land Acquisition No. IV and Others*, (1991) 4 SCC 17and *Jalandhar Improvement Trust* v. *State of Punjab and Others*, (2003) 1 SCC 526. Placing strong reliance on the judgment in the case of *Jalandhur Improvement Trust* (supra), his submission was that it was a case decided on the first principles as there also the application of the land owner was rejected by the authorities under Section 28A of the Act. Mr. Lekhi further submitted that the 'first principle of law' in such a case would be the principle of 'distributive justice' as explained by Salmond on Jurisprudence in Twelfth Edition by P.J. Fitzgerald in the following words:

> "Now justice operates at two different levels. As " distributive justice", it works to ensure a fair division of social benefits and burdens among the members of a

community. One of the most important of democratic rights is the right to vote, the fair distribution of which is clearly demanded by the Benthamite claim that each should count for one and no one for more than one-a principle which would be manifestly offended against by a restriction of the franchise to red-haired citizens. One of the citizen's most onerous burdens is taxation, which too should, in justice, be fairly distributed, so that a statute taxing red-haired citizens at double the rate of others would equally contravene this requirement. Distributive justice then serves to secure a balance or equilibrium among the members of society.

This balance, however, can be upset. Suppose one citizen, X, is prevented by another, Y, from exercising his right to vote. Now the balance is upset because Y has deprived X of a right that should be equally enjoyed by all. At this point "corrective justice" will move in to correct the disequilibrium by forcing Y to make X some compensation. Or again if a wrongfully seizes B's property, corrective justice acts to restore the status quo by compelling A to make restitution. Justice, then, in its distributive aspect serves to secure, and in its corrective aspect to redress, the balance of benefits and burdens in a society.

The former aspect is the concern primarily of those whose task it is to enact constitutions and codes and make new laws by legislation, these being the levels at which division of social goods takes place. The function of the courts is chiefly that of applying justice in its corrective sense. In a just system of law, then, we shall expect to find on the one hand rules aiming to procure an equality of distribution, and on the other specific rules relating to the application of corrective justice by the courts. These latter rules, however, can be themselves regarded as securing fair dispensation of corrective justice."

13. He thus submitted that justice required that two co-owners of a property, which is acquired by the Government, be treated alike by paying same amount of compensation which would be meting out fair and equal treatment to them.

14. It is this submission of Mr. Lekhi to which we have given our thoughtful consideration.

12. It would also be useful to reproduce the following paragraphs of judgment rendered in ***Kalawati*** (*supra*):

15. Article 300A of the Constitution mandates that no person shall be deprived of his property, save by the authority of law. The Act is the law which permits the Government to acquire the land of another person compulsorily, i.e. against his wishes and without his consent. The power to acquire land is an exercise of sovereign power of the State commonly known as doctrine of eminent domain. State has right to acquire the property of its citizens in public interest and for public purpose. Since it is compulsory acquisition of the property belonging to other person and against his will, the Act further provides that a person who is deprived of his land, is to be compensated by giving him the market value of the land so acquired. The Act lays down the principles which are to be kept in mind while determining such market value. Principles for determination of the market value are intended to award to expropriated owner the value of property acquired. The purpose is to indemnify a person and compensation should be equivalent in terms of money of the property compulsorily acquired. In *State of Gujarat* v. *Shantilal*, AIR 1969 SC 634, it was observed that in ordinary parlance the expression "compensation" means anything given to make things equivalent; a thing given to or to make amends for loss, recompense, remuneration or pay." In determining the amount of market value on the principles set out in Section 23(1) of the Act, it should be borne in mind that compensation under Section 23 is paid to indemnify a person and it should be equivalent or substitute of equal values. In *Hemchand* v. *State of Haryana*, (1994) 6 SCC 720, it was held that compensation is paid to indemnify a person and it should normally be an equivalent, a substitute of equal values. The principle of equivalence which is at the root of statutory compensation postulates that the expropriated owner shall be paid neither less nor more than his loss. We may, in this connection, usefully excerpt the following observations made in *Horn* v. *Sudder Land Corporation*, (1941) 1 All E.R. 480:

> "The word 'compensation' almost of itself carried the corollary that the loss to the seller must be completely made up to him, on the ground that unless he received a price which fully equalled his pecuniary detriment, the compensation would not be equivalent to the compulsory sacrifice."

16. It is for this reason that when the LAC is given power to determine the compensation and make an award under Section 11 of the Act, the aggrieved person may still refuse the said determination and seek reference under Section 18 of the Act to the Reference Court and it is the said Court, namely, the judicial authority which is given the task of determining the market value. Even when the compensation is determined by the Reference Court, the Act gives a right to the aggrieved party to file further appeal under the provisions of Section 54 of the Act. The attempt is to determine, by judicial process, fair market value of the land acquired by the Government and compensate the land owner with an equivalent/equal value.

21. Reading of the aforesaid judgment makes it clear that it was treated as the first principles of law that a co-owner is entitled to have the benefit of the enhanced compensation given to the other co-owners qua the same land acquired which belonged to all of them, jointly. It can thus be clearly concluded that this judgment is the authority for the proposition that even if the case does not fall strictly within the ambit of Section 28A of the Act, still on the principle of parity, another exception is carved out, namely, when the acquired land belongs to co-owners jointly, which is subject matter of acquisition, all the co-owners are to be given the same compensation and they cannot be treated differentially. This is inherent in the concept of co-ownership itself as laid down by the Supreme Court in the case of A. *Viswanatha Pillai* (supra) in the following words:

> "It is settled law that one of the co-owners can file a suit and recover the property against strangers and the decree would enure to all the co-owners. It is equally settled law that no co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other hand he has right, title and interest in every part and parcel of the joint property or coparcenery under Hindu law by all the coparceners. In *Kanta Goel* v. *B.P. Pathak*, (1977) 2 SCC 814 this court upheld an application by one of the co-owners for eviction of a tenant for personal occupation of the co-owners as being maintainable. The same view was reiterated in *Sri Ram Pasricha* v. *Jagannath*, (1976) 4 SCC 184 and *Pal Singh* v. *Sunder Singh*, (1989) 1 SCC 444. A co-owner is as much an owner of the entire property as a sole owner of the property. It is not correct to say that a co-owner's property was not its own. He owns several parts of the composite property along with others and it cannot be said that he is only a part Owner or a fractional owner in the property. That position will undergo a change only when partition takes place and division was effected by metes and bounds. Therefore, a co-owner of the property is an owner of the property acquired but entitled to receive compensation pro rate. The State would plead no waiver nor omission by other co-owners to seek reference nor disentitle them to an award to the extent of their legal entitlement when in law they are entitled."

22. Thus, we conclude that normally a person whose land is acquired and thereupon award is made by the LAC fixing the compensation, he should seek enhancement thereof in the manner provided under the Act by resort to the provisions of Sections 18, 54 and 28 of the Act. However, if he is co-owner of the land acquired and other co-owner gets enhanced compensation in appeal etc., he would be entitled to same treatment even if he did not prefer appeal, on the first principles of law that one co-owner is entitled to have the benefit of the enhanced compensation given in respect of other co-owners of the land acquired, which belonged to all of them, jointly.

13. In our view the case of the petitioners would be fully covered by the decision rendered in the case of ***Kalawati*** (*supra*) in view of the fact that other co-owners of the acquired land had been granted enhanced compensation by the Supreme Court of India. Thus, the petitioners would be entitled to the same treatment as the other co-owners except with regard to Khasras No. 13/1, 14/7, 14/14, 14/17. Resultantly, all the four writ petitions are allowed in above terms.

14. The Rule is made absolute.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MAY 02, 2018
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