

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

SUBJECT : LandAcquisition Act

RFA No.348/1987 and CM No.3508/2005

Reserved on : 22nd September, 2008

Decided on: 5th December, 2008

Hardwari Lal (Deceased)  
Through Legal Representatives ...Appellant  
Through : Mr. Ravi Bakshi, Adv. with  
Mr. Rajinder K. Nagpal, Adv.

Vs.

Rai Singh (Deceased)  
Through Legal Representatives ....Respondent  
Through : Mr. S.S. Tomar, Adv.

Coram:

HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. This appeal has been filed by Hardwari Lal (deceased through LR) against the order dated 18th May, 1987 passed by learned Additional District Judge, Delhi whereby in a reference made under Section 30/31 of the Land Acquisition Act for apportionment of compensation of land bearing Khasra No.7/3(2-4), 8 (4-16) in total 7 bighas situated Village Rithala, Delhi.

2. The facts are that on 22.7.1968, an application for correction of the revenue record was filed by the appellant in the court of the Revenue Assistant, Delhi alleging that he was the Bhumidar of Khasra No. 710/188 measuring 1 bigha and 12 biswas. The actual possession of the land, however was with respondent who was not ready to hand over the possession to the appellant. There was another plot number 17 adjacent to the above land which was also occupied by Rai Singh. He stated that he be delivered possession of the plot measuring 1 bigha 12 biswas and necessary demarcation of the land be also carried out.

3. The application was referred to the Tehsildar for necessary enquiry and in the report filed after recording the evidence of both the parties it was stated that on 14.10.1968, the land was not being used for cultivation for the last 15 years upon which now stands a temple. The learned Revenue Assistant after hearing both the parties vide his order dated 16.8.1969 rejected the application of the appellant.

4. Aggrieved by the above said order, the appellant preferred an appeal in the court of Additional Collector, Delhi, which was also dismissed and the order of Revenue Assistant was upheld. The findings given in those decisions were conclusive as the appellant had not preferred any appeal against the said orders.

5. Thereafter the appellant filed a reference under Section 30/31 of the Land Acquisition Act for apportionment of compensation of the land before the Additional District Judge.

6. The notices to the said reference were issued to the interesting parties. The appellant had claimed compensation on the ground of his being Bhumidar of the land. On the other hand respondent has claimed compensation on the ground that the land was under a temple which was used for charitable purposes. Previous khasra No. of this land was 710/188 measuring 1 bigha 12 biswas. The land was of superior class. So this land was allotted in lieu of that previous khasra No. The present Khasra Nos. were allotted to the same land in consolidation proceedings. He has further submitted that the land formed a part of the Shiv Mandir and the same was donated in the year 1952-53 by Smt. Chander Kali widow of late Siri Chand and Smt. Bhariyan Widow of late Raja Singh to the said Temple for charitable purposes and the same has been used for the charitable purposes only since then.

7. Both the parties led their evidence before the Additional District Judge, who disposed of the said reference under Section 30/31 of the Land Acquisition Act and have given his finding in para 7 of the impugned order which reads as under:- I have gone through the record. It is admitted by I.P. 1 that previously Khasra no. Of the land was 710/188 and after consolidation the present Khasra No. was allotted in lieu thereof. Land was not cultivated nor possessed by Hardwari Lal as is clear from the judgment of the Court of Shr. Dharam Dutt, Add. Collector, Delhi, dated 7.2.70. Khasra girdwari was entered in the name of the temple. The property was used for charitable purposes for more than 30 years. So I.P. 1 has no right to receive compensation of the land in question. Only temple is entitled to receive the compensation. Rai Singh I.P. 2 has claimed compensation on behalf of the temple. The purpose of the trust has ceased because the land has been acquired and there is no temple in existence at present. The parties disputed about the existence of the trust through Rai Singh and others have got it registered in Dec. 1986 u/s 92 of C.P.C. the court can frame policy for the execution of the trust. Money cannot be given back to the previous owners. So Shiv Mandir is entitled to receive the compensation. Representative of Shiv Mandir can withdraw this amount only with the permission of the Ld. District Judge, Delhi after getting permission U/s 92 C.P.C. Till then the money will remain in the Court. 8. Against this order, this appeal has been filed by the appellant on the ground that he was the bhumidar of the land and as

such was entitled to its possession. The land in question was acquired by Government vide order no. 16 of 1985-86. The previous khasra number of the land in dispute was 710/188 measuring 1 bigha 12 biswas. During the consolidation proceedings, khasra no. 710/188 measuring 1 bigha 12 biswas was allotted for the land in dispute i.e. Khasra No. 7/3(2-4), 7/8(4-16). All the revenue entries and bhumidari certificate issued by the Revenue Authority in respect of the land are in favour of the appellant.

9. It is further argued by the learned counsel that the appellant produced on record copy of khatauni for the years 1965-1969 which clearly shows that the appellant was the owner/bhumidar in possession of Khasra no. 710/188. There is no Khasra girdwari on record which shows that there remained temple on the land in dispute at any time. The Govt. took the possession of the land from the appellant. The date of commencement of Bhumidar rights have been shown from 1954-55.

10. On the other hand, the learned counsel for the respondent argued that the land was never in the possession of the appellant. The land was in the name and possession of Smt. Chander Kali, widow of Sh. Siri Shand and Smt. Bharyan, widow of Raja Singh who donated the said property for the construction of a mandir and dharmshala. Since then the temple stands on this khasra. The land has never been cultivated nor it was possessed by the appellant.

11. It was further argued by the learned counsel for the respondents that the only contention of the appellant is that he is the Bhumidar of the land as his name stands recorded in the khasra Girdwari for the year 1967-68 for which no record has been produced by him. The entries of the khasra Girdwari shows the land recorded as ghairmumkin Mandir. The Tehsildar had reported that the land had not been cultivated for the last 15 years and it was Banjar Qadim. No regular suit has been filed by the appellant for possession. The statement of the witnesses recorded by Tehsildar shows that the land was cultivated by Ms. Imarti and Chander Kali. In the year 1958, the land was nominated by these two women for the construction of a temple and no record or evidence prior to 1967- 68 has been produced by the appellant to support his case. Only the statement of Up-Pradhan of the village supports the case of the appellant.

12. We consider that in the present case, it is not in dispute that the land in question has not been cultivated by the appellant. The land is being used for charitable purposes since 1953-54 and is held to be the charitable land by the Revenue Assistant and Additional Collector against which no appeal is preferred by the appellant. The appellant was not in possession of the land. The land is used as a temple. Even in the report of the Tehsildar, the land has been shown as ghairmumkin Mandir and Banjar Qadim.

13. The case of the appellant is that he is the Bhumidar of the suit property and the respondents are only in possession. On the documents placed on record, the learned trial court has come to a right conclusion that in a reference under Section 30, compensation be given to Shiv Mandir Trust and not to the appellant. Mere assertion of the appellant that he is the Bhumidar cannot entitle him for compensation.

14. We are of the opinion that there is no infirmity in the impugned order. The Trial Court is right in observing that only Shiv Mandir is entitled to receive the compensation through its representative. We find no merit in the appeal, it is hereby dismissed.

Sd./-  
MANMOHAN SINGH, J.

Sd./-  
A.K. SIKRI, J.

DECEMBER 05, 2008