

Sunder Lal

Vs

Paramsukhdas

Civil Appeals Nos. 1003 and 1004 of 1964

(J. C. Shah, S. M. Sikri, J. M. Shelat JJ)

25.08.1967

JUDGMENT

SIKRI, J. -

These two appeals, by special leave, are directed against the judgment of High Court of Judicature at Bombay (Nagpur Bench), dated January 7, 1963, allowing two Civil Revision applications Nos. 294 of 1962 and 295 of 1962, filed by Paramsukhdas, a respondent before us. The High Court, by this judgment, quashed orders dated April 9, 1962, in the Land Acquisition Cases No. 189 of 1961 and No. 190 of 1961 (as amended subsequently on July 6, 1962) and remitted the matter to the Court of the Civil Judge, Akola, for a fresh decision on merits with advertence to the remarks in the judgment. The High Court further directed that Paramsukhdas be allowed to be impleaded as a non-applicant in the two proceedings and all parties will be allowed to amend their pleadings or make fresh pleadings with respect to the alleged compromise as filed before the High Court in Special Civil Application No. 232 of 1960.

Mr. S. T. Desai, the learned counsel for the appellant, contends :

- (1) That the High Court has no jurisdiction under s. 115 C.P.C. to interfere with the orders of the Civil Judge, dated April 9, 1962;
- (2) That Paramsukhdas, respondent No. 1, is not a person interested in the compensation and is not entitled to be impleaded as a party to the references under s.18 of the Land Acquisition Act, 1894, (I of 1894) - hereinafter referred to as the Act;
- (3) That, if at all, no revision but appeal lay to the High Court.

Before dealing with the above contentions it is necessary to state the relevant facts. Sunderlal, appellant owned some land (field No. 22) in Mouza Umari, Taluq and District Akola. This field had been leased to Khushal Singh under a registered lease for 5 years commencing from April 1, 1954. The field was acquired by the Government. The Land Acquisition Officer made his award on January 30, 1960, and assessed the total compensation at Rs. 26,105.58, and apportioned the amount equally between Sunderlal and Khushal Singh. On February 17, 1960, the Land Acquisition Officer noted the following regarding Khushal Singh :

"2. Khushalsing s/o Tolaram

(a) According to letter No. 154/60 of 15th February, 1960 from the Court of Civil Judge (Sr. Dn.) Khamgaon, and the attachment order issued by that Court, in C.S. No. 4-B/1958, the amount to be paid to Khushalsing Tolaram be kept in Revenue Deposit.

(b) One Sunderlal minor guardian father Madanlal Harjimal, of Akola, has presented an objection-petition against this payment."

Sunderlal filed an application for reference under s. 18 of the Act, claiming more compensation and also complaining in regard to the apportionment of the amount of compensation between him and Khushal Singh. According to him, Khushal Singh was not a protected tenant and his period of lease having expired, he was not at all entitled to any portion of the amount of compensation. A reference under s. 18 was made on June 27, 1961, and this reference was numbered Land Acquisition Case No. 189 of 1961. Khushal Singh also applied for a reference and he claimed enhancement of compensation and challenged the basis of apportionment adopted by the Land Acquisition Officer. The Collector made the reference and it was numbered Land Acquisition No. 190 of 1961.

Before we deal with what happened before the Civil Judge, it is necessary to give some facts about the litigation between Sunderlal and Khushal Singh. On July 21, 1956, Sunderlal filed a suit (Civil Suit No. 133-B of 1956) against Khushal Singh for rent due on January 1, 1955, and January 1, 1956, in the Court of Civil Judge, Akola. On July 22, 1957, the Civil Court referred the matter to the Revenue Court under s. 16-A of the Berar Regulation of Agricultural Leases Act, 1951. On July 25, 1958, the Sub-Divisional Officer, Akola, answered the reference (Revenue Case No. 79 of 1957-58) holding that Khushal Singh was not a protected lessee. On appeal, the Deputy Collector, Akola, held, on October 8, 1959. That Khushal Singh was a protected lessee. The Bombay Revenue Tribunal confirmed the order of the Deputy Collector on March 22, 1960. Sunderlal filed a petition before the High Court under Art. 226 of the Constitution. It was numbered Special Civil Application No. 232 of 1960. On February 8, 1961, a compromise petition (Civil Application No. 163 of 1961) was filed in the High Court, in Special Civil Application No. 232 of 1960. It was stated in the compromise petition that Khushal Singh did not wish to dispute Sunderlal's contention that the land was leased for horticulture purposes and that he not acquired the status of protected lessee, as defined in the Berar Regulation of Agricultural Leases Act, 1951. Khushal Singh further stated that he had no objection to the quashing of the orders of the Bombay Revenue Tribunal dated March 22, 1960, and of the Deputy Collector dated October 8, 1959.

On March 11, 1961, Paramsukhdas filed an application (Civil Application No. 246 of 1961) in the High Court in Special Civil Application No. 232 of 1960, claiming to be heard. He alleged that he had obtained a decree against Khushal Singh and started execution proceeding for Rs. 20,013/- and the amount of Rs. 13,644.27 ordered to be paid to Khushal Singh as compensation had been attached by him for the satisfaction of his decree. He alleged that Khushal Singh and Sunderlal had mala fide entered into an agreement and had filed a compromise application asking for quashing of the orders of the Revenue Courts with the sole object of setting at naught the attachment and executing of his decree. He prayed, therefore, for leave to appear in the case as a party vitally interested. He further prayed that the compromise application should not be entertained and should be dismissed in the interest of justice.

It appears that on March 20, 1961, this application came up for hearing before the High Court. Paramsukhdas, however, took three weeks, more time from the High Court, which was granted to him. It further appears that Paramsukhdas withdrew the said amount of Rs. 13,644.27 towards

satisfaction of his decree. On April 18, 1961, he filed another application (Civil Application No. 365/61) wherein he stated that he had withdrawn the amount and alleged that he was now an interested party, and, therefore, he should be joined as a party. On the same date, his Advocate, Mr. Sohoni gave an undertaking in the following terms :

"Mr. Sohoni undertakes to hold the moneys withdrawn by his client subject to the order of this Court on this application."

On August 3, 1961, the High Court disposed of Civil Application No. 163 of 1961, Civil Application No. 246 of 1961 and Civil Application No. 365 of 1961. The High Court held that in the circumstances "we do not consider it advisable to proceed in this matter ourselves. The parties will be at liberty to file the compromise petition in the Civil Court where proceedings are pending on reference under section 18 of the Land Acquisition Act." The High Court, in order to safeguard the interests of the parties, kept these proceedings pending till the decision on the compromise petition by the Civil Court. The compromise petition was directed to be returned to Sunderlal.

On September 18, 1961, Sunderlal and Khushal Singh filed applications for compromise in both the Land Acquisition references. Paramsukhdas filed applications under O. XXII r. 10, read with s. 151, C.P.C., praying that his name be substituted or added as an applicant. He alleged that the compromise was fraudulent and that Khushal Singh was abandoning the case, and as an attaching creditor, he was entitled to be added a party to the case. Both Khushal Singh and Sunderlal objected, and by two orders dated April 9, 1962, the Civil Judge rejected the applications of Paramsukhdas. He framed the issue :

"Whether Paramsukhdas can be permitted to be substituted or added as a party to these two references."

He held that admittedly Paramsukhdas had not approached the Land Acquisition Officer in the Proceedings in which the award was passed on January 30, 1960. He had not appeared before the Land Acquisition Officer as a person interested in the land or the compensation that would be determined by the authorities. He further held that under the circumstances Paramsukhdas was not one of the persons interested in the acquired land before the Collector, and he also could not be one of the persons interested in the objections under s. 20(b) of the Act. After referring to *Manjoor Ahmad v. Rajlaxmi Dasi* (A.I.R. 1956 Cal. 263) and *Abu Bakar v. Peary Mohan Mukherjee* (I.L.R. 34 Cal. 451), he held that the scope of the reference under s. 18 was limited and new questions not covered by the reference could not be entertained. He reviewed his orders on July 6, 1962, but nothing turns on that in the present appeals.

Paramsukhdas filed two revisions, Nos. 294 and 295 of 1962, before the High Court on June 30, 1962. On August 22, 1962, Sunderlal filed an application for withdrawal of Special Civil Application No. 232 of 1960. The High Court, on September 24, 1962, ordered :

"Allowed, main petition dismissed as withdrawn. No costs."

Before the High Court a preliminary objection was raised in Civil Revisions Nos. 294 and 295 of 1962, that revisions were not competent because appeals lay against the orders of the Civil Judge. The High Court overruled this objection. Regarding the claim of Paramsukhdas to be added as a party, the High Court held that his application showed that he was not claiming any interest in the lands themselves but was only claiming an interest in the compensation for the land which had been

deposited in the Court for payment to the persons concerned, and as such was a person interested, as defined in s. 3(b) of the Act, and he would, therefore, be entitled to claim that he should be allowed to join as a party.

Mr. Desai contends that an attaching creditor is not interested in the amount of compensation as compensation. His interest, he urges, is only to get moneys belonging to the judgment-debtor in enforcement of his rights, and accordingly he is not entitled to be made a party to the reference under s. 18 of the Act. He further contends that the Court in hearing a reference under s. 18 of the Act can only deal with an objection, which has been referred and cannot go into any matter beyond the reference. He concludes : if this is so, even if Paramsukhdas is ordered to be added a party he would not be able to challenge the compromise between Sunderlal and Khushal Singh. The learned counsel for the respondent, Mr. C. B. Agarwala, controverts these submissions. He says that Paramsukhdas is a person interested in the objection within s. 20, and is a person affected by the objection within s. 21 of the Act. He also relies on O. XXII r. 10(2), C.P.C., which is made applicable by s. 53 of the Act.

Before examining the authorities cited at the Bar, it is necessary to examine the scheme and the provisions of the Act insofar as they are relevant to the question of determination of compensation, the question of apportionment of the compensation, and the question as to the persons who are entitled to be heard. Section 3(b) defines the expression "person interested" as follows :

"the expression person interested includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."

It will be noticed that it is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded. It seems to us that Paramsukhdas is a "person interested" within s. 3(b) of the Act because he claims an interest in compensation. But before he can be made a party in a reference it has to be seen whether he comes within s. 20(b) and s. 21 of the Act.

The scheme of the Act seems to be to first deal with persons who are interested in land. These persons are heard under s. 5A of the Act. The ordinary meaning of "the person interested in land" is expanded by s. 5A(3), for the purposes of this section, to include a person who could be entitled to claim an interest in compensation. It would be strange to come to the conclusion that the Legislature is keen that a person claiming an interest in compensation should be heard before the land is acquired but is not interested in him after the land is acquired. On the contrary, it follows from s. 5A(3) that a person claiming an interest in compensation would be one of the persons whose interest are meant to be safeguarded. It appears from ss. 6 to 10 that a person claiming an interest in compensation is not expressly mentioned. But in s. 11 he is expressly mentioned, and it is directed that the Collector shall inquire into respective interests of the persons claiming the compensation and shall make an award. Section 12 makes the award final and conclusive as between persons interested, i.e. including persons claiming an interest in compensation. Under s. 14 the Collector has power, inter alia, to summon the parties interested.

Under s. 18 any person interested can claim a reference. A person claiming an interest in compensation would also be entitled to claim a reference. After reference is made the Court is

enjoined under s. 20 to determine the objections, and serve, among others, all persons interested in the objection. A person claiming an interest in compensation would, it seems to us, be a person interested in the objection if the objection is to the amount of compensation or the apportionment of compensation, and if his claim is likely to be affected by the decision of the objection. Section 21 restricts the scope of enquiry to a consideration of the interests of the persons ejected by the objection. But it does not follow from s. 21 that there is any restriction on the grounds which can be raised by a person affected by the objection to protect his interests. The restriction that is laid is not to consider the interests of a person who is not affected by the objection. Section 29 deals with apportionment of compensation, if there is agreement, and s. 30 enables the Collector to refer disputes as to apportionment to the Court. From the above discussion it follows that a person claiming an interest in compensation is entitled to be heard under ss. 20 and 21 of the Act. The provisions of the Act, including ss. 20 and 21, do not prescribe that his claim to an interest in compensation should be "as compensation" as urged by Mr. Desai. This is really a contradictory statement. For, a fortiori, he has no interest in land, and compensation is given for interests in land. He can never claim compensation qua compensation for what he claims is an interest in the compensation to be awarded. This is not to say that a person claiming an interest in compensation may not claim that the compensation awarded for the acquired land is low, if it affects his interests.

In the view we have taken we are supported by some authorities. Shah, J., speaking for the majority in *Grant v. State of Bihar*, (A.I.R. 1966 S.C. 237) observed :

"The right of the State of Bihar arose on May 22, 1952 when the right to the land vested in it by virtue of the notification issued under the Bihar Land Reforms Act. There is nothing in the Land Acquisition Act which prohibits the Collector from making a reference under s. 30 for determination of the title of the person who has since the date of the award acquired a right to the compensation. If after a reference is made to the Court the person interested dies and his title devolves upon another person, because of inheritance, succession, insolvency, forfeiture, compulsory winding up or other form of statutory transfer, it would be open to the party upon whom the title has devolved to prosecute the claim which the person from whom the title has devolved would have prosecuted. In *Promotha Nath Mitra v. Rakshal Das Addy* (11 Cal. L.J. 420) it was held that a reference made by the Collector under s. 30 of the Land Acquisition Act at the instance of a proprietor of land may be prosecuted by the purchaser of his rights after the award at a revenue auction. If the right to prosecute a reference by a person on whom the title of the person interested has devolved be granted, there is no reason why the right to claim a reference of a dispute about the person entitled to compensation may not be exercised by the person on whom the title has devolved since the date of the award.

The scheme of the Land Acquisition Act is that all disputes about the quantum of compensation must be decided by resort to the procedure prescribed by the Act; it is also intended that disputes about the rights of owners to compensation being ancillary to the principal dispute should be decided by the Court to which power is entrusted. Jurisdiction of the Court in this behalf is not restricted to cases of apportionment, but extends to adjudication of disputes as to the person who are entitled to receive compensation, and there is nothing in s. 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of land has, since the award, devolved."

In *Golap Khan v. Bholanath Marick* (12 Cal. L.J. 545) an attaching creditor was directed to be made a party to the reference under the Land Acquisition Act, before the Civil Court Mookerjee, J., observed :

"The petitioner was entitled to be added as a party, not under Rule 10, but on the ground that he was a person interested in the subject-matter of the litigation and that no order ought to have been made for its disposal without any opportunity afforded to him to establish his claim."

In *Siva Pratapa Bhattadu v. A.E.L. Mission* (A.I.R.) 1926 Mad. 307) an attaching creditor was held to be a person interested within s. 3(b) of the Act.

Mr. Desai relies on *Manjur Ahmed v. Rajlakshmi* (A.I.R. 1956 Cal. 263) but in that case the point decided by the Court was different. It was held there that if a party to a land acquisition proceeding before the Collector has not obtained a reference under s. 18 of the Act, its representative could not do indirectly what they did not directly, i.e. they could not be added a party in a reference pending at the instance of other parties in order that the nil award against the party might be reversed and in order that they might be awarded a share of the compensation money. Here no such point has been raised. It has not been urged before us that *Paramsukhdas* was a party before the Collector and that having not applied for a reference under s. 18 he is now debarred from being added as a party.

The case of *Gobinda Kumar Roy Chowdhury v. Debendra Kumar Roy Chowdhury* (C.W.N. 98) was also decided on the same lines. Similar view reiterated in *Mahammad Safi v. Haran Chandra* (12 C.W.N. 985). Both these cases had followed *Abu Bakar v. Peary Mohan Mukherjee Maclean, C.J.* observed as follows in *Abu Bakar v. Peary Mohan Mukherjee* (34 Cal. 451).

"If we read that section in connection with section 20 and section 18, I think it is impossible to avoid the conclusion that the Legislature intended that all that the Court could deal with was the objection which had been referred to it; and this seems to be a view consistent with commonsense and with the ordinary method of procedure in civil cases. The Zamindar here could, if he liked, have raised the objection as to the whole compensation for the trees being given to the tenants, but he did not do so. He must, therefore, be taken to have accepted the award in that respect : and it would be little less than dangerous if we were to hold that the Judge to whom only objection was referred would go into all sorts of questions and objections which had not been referred to him."

These three cases are distinguishable inasmuch as they are dealing with the cases of persons who having a right to seek a reference failed to claim that reference but ought to raise the point in a reference made at the instance of another party.

The case of *Karuna Sindhu Dhar v. Panna Lal Paramanik* (65 C.W.N. 802) also does not assist the appellant. The High Court held in that case that as *Rajmohan* never claimed the entire compensation money before the Collector, the held Acquisition judge was not entitled to vary the awards by a declaration that *Rajmohan* alone was entitled to get the compensation.

It seems to us that *Paramsukhdas* was clearly a person interested in the objections which were pending before the Court in the references made to it and that he was also a person whose interest would be affected by the objections, within s. 21. He was accordingly entitled to be made a party. In

the result we uphold the order made by the High Court in this respect.

Mr. Desai says that at any rate direction should be given that Paramsukhdas should not be entitled to challenge the compromise entered in to between Sunderlal and Khushal Singh. We are unable to accept this submission. Paramsukhdas is entitled to raise all point to protect his interests which were affected by objections. It is also in the interest of justice that there should not be multifarious proceedings and all points arising which are not expressly barred under s. 21 should be gone into by the Court.

This leaves only the two point regarding the jurisdiction of the High Court. In our view, the High Court in quite right in holding that the orders of the Civil Judge, dated April 9, 1962 were not awards within s. 54 of the Act. The awards had still to be made. If no appeal lay, then the revisions were competent and the High Court was right in entertaining the revisions because the Civil Judge had either refused to exercise jurisdiction vesting in him or had acted with material irregularity in the exercise of his jurisdiction.

In the result the appeals fail and are dismissed with costs in favour of Respondent No. 1; one hearing fee.

Y.P.

Appeal dismissed.

</html