

A. Viswanatha Pillai and Others

Vs

The Special Tahsildar For Land Acquisition No. IV and Others

Civil Appeal Nos. 54 to 56 of 1975

(N.M. Kasliwal, K. Ramaswamy JJ)

09.08.1991

JUDGMENT

K. RAMASWAMY, J.

1. These appeals by special leave are directed against the judgment and decrees of Kerala High Court in A.S. Nos. 603, 604 and 605 of 1969 dated June 29, 1973 confirming the award and decrees of the civil court in L.A.O.P. No. 413 etc. of 1964 and 370 and 405 of 1966 dated January 16, 1969. The notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was published in the gazette on October 25, 1960 acquiring an ancient Chalai Anicut together with embankments, sluices, culverts etc. by six notifications. This ancient Chalai Anicut originally belonged to Arumughom Pillai. On his demise it devolved on his four sons Venkatachalam Pillai, Vishwanathan Pillai, Pasupathy Pillai and Subhpathy Pillai by intestate succession as coparceners. By partition deed Ex. B-23 dated December 22, 1954, the four brothers partitioned certain properties but kept in common the acquired Chalai Anicut under the management of the eldest brother Venkatachalam Pillai. Pursuant to the notice issued under Section 9(3) and 10 of the Act, Venkatachalam filed his objections, making reference therein to the partition deed No. 2437 of 1954 in the Registrar's office, Palghat and that each of the brothers had 1/4 share in the anicut and irrigation system. After the award made by the Land Acquisition Officer compensation was made to all the brothers at 1/4 share each. Venkatachalam sought six references under Section 18 as he was dissatisfied with the awards made by the Land Acquisition Officer. The civil court enhanced in all to a sum of Rs 52,009.40. The State filed no appeal against the enhancement of the compensation. The civil court granted an award of 1/4 share thereof to Venkatachalam Pillai with solatium at 15 per cent and interest thereon at 4 per cent and did not award the balance amount to the appellants in their respective shares on the ground that they did not jointly ask for reference but only one alone asked for it. The two brothers asked for reference for two awards only and the last one did not ask for reference of any award. On appeals, the High Court confirmed the award and decrees of the civil court. Thus these three appeals at their behest. Common question of law arises in these appeals and hence they are disposed of by a common judgment.

2. The sole question for decision is whether in a reference sought for by one of the co-owners whether the other co-owners who did not expressly seek reference, are entitled to enhanced compensation pro rata as per their shares. It is not in dispute that under the partition deed, the four brothers as coparceners kept in common the acquired property and Venkatachalam was in management thereof and each are entitled to 1/4 share in the ancient and the irrigation system. It is also undisputed that total enhanced compensation is Rs 52,009.40. Therein all the four brothers including the appellant are entitled to 1/4 share each. In the reference application made by Venkatachalam indisputably he mentioned that the acquired property belonged to him and his other

brothers and the compensation awarded by the Land Acquisition Officer was inadequate and very low. It was also stated that they should get an enhanced amount at the figure specified in the reference application. Undoubtedly he stated therein that he is entitled to 1/4 share. What he stated thereby was that of his entitlement of 1/4 share of the total enhanced compensation and obviously, after the reference on par with his three brothers, he is entitled to receive compensation at 1/4 share. The courts below disallowed the payment to the appellants on the ground that there is no mention in claim petition of the partition deed; that they are the co-owners and that there is no averment that Venkatachalam was seeking reference under Section 18 on his behalf and on behalf of his other three brothers. As regards the first two grounds are concerned they are palpably incorrect. It is seen that an express averment was made in the objections filed pursuant to notice under Sections 9(3) and 10 and also in his reference application under Section 18 of the Act, that there was prior partition and each of the brothers are entitled to 1/4 share and that they are dissatisfied with the award of the Collector. Undoubtedly there is no express averment in the reference application under Section 18 that he is seeking a reference on his behalf and on behalf of his three brothers. It is contended by the counsel for the State that the pleadings are to be strictly construed and that as the reference was sought for only by Venkatachalam of all the six awards the other three brothers are not entitled to any share in the enhanced compensation. In support thereof it is also further contended that Viswanathan and Pasupathy had only asked for reference in respect of two awards and Sabhapathy Pillai made no request for reference against any of the six awards made by the Collector. It is true that Viswanathan and Pasupathy made such request in respect of two awards and Subhapathy did not make any request for reference against any of the awards. But what would be the consequence in law is the question. It is surprising that the State having acquired the property of a citizen would take technical objections regarding the entitlement of the claim. The State certainly is right and entitled to resist claim for enhancement and led evidence in rebuttal to prove the prevailing price as on the date of notification and ask the court to determine the correct market value of the lands acquired compulsorily under the Act. But as regards the persons entitled to receive compensation are concerned it has no role to play. It is for the claimants inter se to lay the claim for compensation and the court would examine and award the compensation to the rightful person. As seen in the objections pursuant to the notice under Sections 9(3) and 10, Venkatachalam made necessary averments that himself and his brothers had 1/4 share in the anicut and irrigation system pursuant to the partition deed referred to therein. In his reference application under Section 18 also he reiterated the same and stated that the amount awarded by the Collector was inadequate and that they were dissatisfied with it and that they are entitled to more. 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 : (1977) 3 SCR 412) 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 : (1977) 1 SCR 395) and *Pal Singh v. Sunder Singh* ((1989) 1 SCC 444 : (1989) 1 SCR 671). A co-owners 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 alongwith 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 rata. The State would plead no waiver no 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. Since the acquired property being the ancestral coparcenary and continued to be kept in common among the brothers and the income derived therein was being shared in proportion of their shares by all the brothers it remained as joint property. As co-owners everyone is entitled to 1/4 share therein. It was also laid by this Court in a recent judgment in Ram Kumar v. Union of India ((1991) 2 SCC 247) that it is the duty of the Collector to send full information of the survey numbers under acquisition to the court and make reference under Section 18 and failure thereof is illegal. The same ratio would apply to the facts in this case as well. When one of the co-owners or coparceners made a statement in his reference application that himself and his brothers are dissatisfied with the award made by the Collector and that they are entitled to higher compensation, it would be clear that he was making a request, though not expressly stated so but by necessary implication that he was acting on his behalf and on behalf of his other co-owners or coparceners and was seeking a reference on behalf of other co-owners as well. What was acquired was their totality of right, title and interest in the acquired property and when the reference was made in respect thereof under Section 18 they are equally entitled to receive compensation pro rate as per their shares. The courts below committed manifest error in refusing to pass an award and payment thereof to the appellants merely on the ground that there was no mention in this regard in the reference application or two of them sought reference in respect of two awards and the last one made no attempt in their behalf. The claimants are entitled to payment of the enhanced award by the civil court pro rata of their 1/4 share each with 15 per cent solatium and 4 per cent interest as awarded by the civil court. The appeals are accordingly allowed with costs of this Court.

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