

Kantilal and others

Vs

Shantilal and others

Civil Appeal Nos. 1345 and 1346 of 1986 with 3426 of 1987

(M.H. Kania, N.M. Kasliwal, JJ.)

14.11.1991

JUDGEMENT

KASLIWAL, J.:-

1. In all the above appeals the parties are the same and the controversies raised are intimately connected and dependent on each other, hence all the cases are disposed of by one single order.
2. Land measuring 19 bighas was granted by the ruler of the erstwhile State of Ratlam in favour of ancestors of respondents Shantilal and Poonam Chand Pitaliyas (hereinafter referred to as 'Pitaliyas') for installation of a Ginning factory. Ancestors of Kantilal Jhalani and other appellants (hereinafter referred to as 'Jhalanis') entered into partnership with Pitaliyas and the partnership started a Ginning factory on a portion of the above 19 bighas of land. The names of Jhalanis and Pitaliyas were recorded in the revenue records in respect of the entire land. The above 19 bighas of land had some different survey numbers but subsequently at the time of settlement in Ratlam in the year 1956-57, the numbers were changed to survey numbers 120 and 121. Survey No.120 comprised of 2 biswas and survey No.121 of 18 bighas and 18 biswas. According to the Jhalanis in execution of a decree against Pitaliyas the above land was sold and Jhalanis purchased the said land in an auction. Thereafter, an application was moved by the Jhalanis on 13th April, 1951 for mutation of their names before the Tehsildar in respect of the entire lands bearing survey Nos.120 and 121 leaving such portion of the land on which the Ginning factory was standing. The Tehsildar vide his order dated 20th February, 1953 allowed the application and passed an order mutating the names of Nihalanis on the entire 19 bighas of land. The said mutation was allowed on the basis of compromise between Pitaliyas and Jhalanis and also on the basis of a sale certificate issued by the Civil Court.
3. The Town Improvement Trust, Ratlam (hereinafter referred to as 'the Trust') started acquisition proceedings for a housing scheme under the provisions of the Town Improvement Trust Act, 1960 (hereinafter referred to as 'the Act') and issued a notification on 28th August, 1964 under S. 68 of the Act. Survey Nos.120 and 121 were shown in the notification leaving out some area of Survey No.121. In the acquisition proceedings, the Trust obtained possession of the acquired land on 21st March, 1968.
4. The Collector started suo motu proceedings under S.50 of the Madhya Pradesh Land Revenue Code, 1959 and issued a notice on 17th December, 1970 to the Jhalanis stating that the mutation proceedings did not appear to be legal. It is not necessary to state the details of other proceedings by which the Jhalanis went to the higher authorities as ultimately the matter came back to the Collector by remand. The Jhalanis contested the proceedings before the Collector and prayed for the

cancellation of the notice dated 15th February, 1972 which was issued afresh by the Collector after the remand of the case to him. The Collector ultimately by an order dated 31st March, 1977 set aside the order of mutation passed by the Tehsildar and gave a direction that the Tehsildar, Ratlam will again make the same entry in the revenue records which was done previously in respect of disputed land. It was further directed that thereafter the Tehsildar will do proper investigation and analyse all the concerned facts and events which had happened in the case and take steps for making the record up-to-date. Particularly he will see by which lease and on what conditions originally how much land was given for factory purpose by the State and whether that lease is effective or lapsed. An appeal filed by the Jhalanis to the Additional Commissioner was dismissed by order dated 11th December, 1981. The Jhalanis then filed an appeal before the Board of Revenue. This appeal filed by the Jhalanis was allowed in their favour by the Board of Revenue by order dated 26th March, 1983. The Board inter alia held that pending mutation proceedings, there was compromise between the parties, objections were withdrawn by the Pitaliyas and no appeal or revision was filed against the mutation order nor any suit was filed challenging the order of the Tehsildar. The Pitaliyas then filed a writ petition before the High Court for setting aside the order of the Board of Revenue. The High Court by order dated 29th August, 1984 allowed the writ petition. and set aside the order of the Board of Revenue and restored the orders of the Additional Commissioner and the Collector. Aggrieved against the aforesaid judgment of the High Court, the Jhalanis have filed Civil Appeal No.1345 of 1986 by grant of special leave.

5. In the acquisition proceedings the question of compensation was decided by the Tribunal constituted under S.73 of the Act. The Tribunal by its order dated 30th November, 1973 held that Pitaliyas had no right to claim compensation and the Jhalanis alone were entitled to the entire amount of compensation. The order of the Tribunal was challenged by Pitaliyas, for apportionment of the amount of compensation, also by Jhalanis for increasing the amount of compensation and by the trust for reducing the amount of compensation by filing separate appeals in the High Court. The High Court by its order dated 29th July, 1984 allowed the appeal filed by the Pitaliyas and held that they were entitled to claim compensation in equal proportion with Jhalanis. The High Court dismissed the appeal filed on behalf of the Trust. The High Court allowed the appeal filed by Jhalanis in part and increased the rate of compensation from 0.65 paisa per Sq. Ft. to 0.75 paisa per Sq. Ft. Aggrieved against the aforesaid judgment of the High Court in acquisition proceedings, the Jhalanis have filed Civil Appeal No.1346 of 1986 and the Trust has filed appeal No.3426 of 1987 by grant of special leave.

6. We have heard learned counsel for the parties and have thoroughly perused the record.

7. The land in question was given by the Ruler of erstwhile State of Ratlam for establishing a Cotton Ginning factory at Ratlam. The deed of partnership between the Pitaliyas and Jhalanis has not been produced on the record of this case but the admitted position is that the Jhamabandi entries in the revenue records of the year 1921-22 show that Survey Nos.1326 to 1336, 1337/ 2 and 1340 to 1342 (subsequently changed to Survey Nos. 120 and 121), stood in the name of Keshrimal Vardhman Pitaliya and Keshrimalji Dhanrajji Jhalani in equal shares. Keshrimal Vardhman Pitaliya proprietor of firm Vardhman Keshrimal died sometime prior to 1932 and he left behind two sons Sagarmal and Vinayakrao Pitaliya who became the proprietors of Hindu Undivided Family firm Vardhman Keshrimal Sagarmal and Vinayakrao Pitaliyas did not apply for the mutation of their names in the revenue records, after the death of their father Keshrimal Pitaliya. Keshrimal Dhanraj Jhalani had to recover some amount from the firm Vardhman Keshrimal and he filed a civil suit for the recovery of the money against Sagarmal and Vinayakrao Pitaliyas. A decree was passed in favour of Keshrimal Dhanraj Jhalani and they filed an application for execution of the decree. In the

execution case No. 161/42 of the right, title and interest of Pitaliyas in the Ginning Factory were sold in auction for Rs. 6541/- and which was purchased by Kehsrimal Dhanraj Jhalani on 2nd November, 1946. A sale certificate was also issued in favour of Keshrimal Dhanraj Jhalani by the Civil Court Ratlam on 3rd October, 1950. On the basis of this sale certificate Keshrimal Dhanraj Jhalani applied for mutation in the revenue records on 3rd April, 1951 before the Tehsildar, Ratlam. Along with the application Keshrimal Jhalani filed a copy of the sale certificate and a certified copy of the Jamabandi of the land of Samwat year 2005 (1948-49 A.D.). During the pendency of this mutation application Vinayakrao Pitaliya died leaving no heirs. Sagarmal who was Karta of the Joint Hindu Family filed objections to the mutation application on 17th March, 1952. It is important to note that in these objections Sagarmal clearly raised the ground that in the auction proceedings only movable property of the factory was sold and as such Keshrimal Dhanraj Jhalani had no right to claim mutation of the entire agricultural land in his favour. Thereafter, an agreement took place between Sagarmal Pitaliya and Keshrimal Dhanraj Jhalani on 16th October, 1952. This agreement made in writing was filed before the Tehsildar in which Sagarmal Pitaliya agreed to withdraw his objections for the mutation of his share in 19 bighas of land, in favour of Shri Keshrimal Dhanraj Jhalani in lieu of Shri Keshrimal Dhanraj Jhalani having agreed not to recover Rupees 4941 / being the balance amount of decree passed in suit No. 2 of 1932 against Pitaliyas. Apart from the aforesaid compromise application the statement of Sagarmal Pitaliya was also recorded on 16th October, 1952 itself and Sagarmal clearly made a statement that he was withdrawing his objections as regards mutation in respect of his share in the land of 19 bighas and that he had no objection to the mutation of Shri Keshrimal Dhanraj Jhalani's name in respect of the land in dispute. Thereafter, the Tehsildar rejected the objections filed by Sagarmal and passed an order on 20th February, 1953 granting mutation in the name of Shri Keshrimal Dhanraj Jhalani. After this order of mutation passed by the Tehsildar on 20th February, 1953 Sagarmal or any other member of the family of Pitaliyas did not take any steps for challenging the aforesaid order of the Tehsildar. It is further proved on record that thereafter name of Jhalani alone was continued in the revenue records in respect of the entire 19 bighas of land. The land acquisition proceedings then commenced in the year 1964 and possession over the land was taken by the Trust on 21st March, 1968 from Jhalanis. The Collector took suo motu proceedings in 1970 and passed an order on 31st March, 1977 setting aside the order of the Tehsildar. In the above set of circumstances Pitaliyas came forward and claimed half share in the compensation amount in land acquisition proceedings before the Tribunal. The Tribunal rejected the claim of the Pitaliyas but High Court by order dated 29th August, 1984 granted half share in favour of Pitaliyas taking the view that they were persons interested under the Town Improvement Trust Act. On the same day by a separate judgment the High Court set aside the order of Board of Revenue and maintained the order of the Additional Commissioner and the Collector passed in mutation proceedings.

8. After going through the entire record and hearing the arguments at length, we are clearly of the view that the High Court went wrong in passing the impugned orders. As already mentioned above from the year 1922 onwards the entries in the Revenue records in respect of 19 bighas of land was made in favour of Jhalanis and Pitaliyas both in equal share. Jhalanis had a decree against Pitaliyas and in execution of said decree share of Pitaliyas was auctioned and was purchased by Jhalanis for a sum of Rs. 6541. Sale certificate was also issued in favour of Jhalanis. According to Jhalanis the half share in Pitaliyas in the land was also sold and on that basis an application was filed before the Tehsildar for mutation of the entire land in their favour. According to Sagarmal Pitaliya who was also Karta of Joint Hindu Family, no such land was sold in auction. It may be noted that the bid in auction was for an amount of Rs. 6541/- but it did not satisfy the entire decretal amount and the balance of Rs. 4941/- still remained due against the Pitaliyas judgment-debtors. In view of these

circumstances a compromise took place between the parties according to which Sagarmal agreed to withdraw his objections in consideration of satisfaction of the aforesaid amount of Rs.4941/- outstanding against him. On 16th October, 1952 the compromise application was filed in writing and statement of Sagarmal was also recorded in which he clearly agreed that he will not claim any right in the land and withdraw his objections and the amount of Rupees 4941/- was taken as satisfied and Jhalanis agreed not to recover the aforesaid amount of Rupees 4941/-. It is an admitted position that the order passed by the Tehsildar on 20th February, 1953 rejecting the objections of Sagarmal Pitaliya and mutating the name of Jhalanis for the entire land, was not challenged and the same became final.

9. Mr.U.R.Lalit, learned Sr. Advocate appearing on behalf of Pitaliyas did not argue, that the compromise application filed on 16th October, 1952 and the statement recorded on the same day were forged or not genuine. The only submission made by Mr.Lalit, was that any order passed in mutation proceedings cannot confer any legal title in favour of Jhalanis nor such order can divest the ownership rights of Pitaliyas in the agricultural land. We do not find any force in this submission. Admittedly, there was a decree of a Civil Court and in execution of the same the properties were auctioned. Even if there was any dispute as to whether any share of Pitaliyas in the land was sold or not in the auction proceedings, the same was settled at rest by making a compromise between the parties. Not only that after the order of the Tehsildar passed as back as 20th February, 1953 the Jhalanis alone were recorded as full owners of the properties and also continued to remain in possession. It is also proved that the Trust took possession from Jhalanis on 21st March, 1968 in the land acquisition proceedings. It is nowhere proved on record that the Pitaliyas ever remained in possession of the land in question after 20th February, 1953 till the time they made a claim of half share in the compensation before the Tribunal. The Collector in our view had no justification at all to have initiated such proceedings suo motu in 1970 after 17 years of the order passed by the Tehsildar. Even under the law of limitation no suit for possession could have been maintained after 12 years by Pitaliyas and they were not entitled to any share in the amount of compensation. There was also no justification for entering the names of Pitaliyas in the revenue records and to set aside the order of the Tehsildar dated 20th February, 1953 after 17 years. As already mentioned above, Tehsildar was perfectly justified in passing the order dated 20-2-1953 on the basis of the sale certificate, as well as compromise application and the statement of Sagarmal made before him on 16-10-52.

10. Now, we shall deal with Civil Appeal No. 3426 of 1987 filed by the Trust. It was argued on behalf of the appellant-Trust that in the erstwhile State of Ratlam one bigha was equivalent to 21511 Sq. Ft. as per Jantri Milan Bigha Va Ekaad prepared in 1911 and the lower Courts wrongly calculated the area acquired by treating one bigha equivalent to 22500 Sq. Ft. as now prevalent according to the prescribed standards. We do not find any force in the above contention. No such argument was raised before the Tribunal and it was raised for the first time before the High Court. The High Court rejected the aforesaid argument on the ground that admittedly at present one bigha was equivalent to 22500 Sq. Ft. and no contention was raised before the Tribunal that one bigha was equivalent to 21511 Sq. Ft. prevalent in the erstwhile State of Ratlam. This being a controversial question of fact and the other side having given no chance to lead any evidence on this point it was difficult to rely on the Jantri Milan Bigha Va Ekaad. The High Court thus held that the compensation for one Bigha of land would be calculated as equivalent to 22500 Sq. Ft. We do not find any error in the aforesaid view taken by the High Court.

11. It was next contended on behalf of the Trust that the Tribunal had awarded compensation at the rate of 0.65 paise per Sq. ft. and there was no ground or justification for the High Court to have

increased the same at the rate of 0.75 paisa per sq. ft. There is some force in the above contention raised on behalf of the Trust. The High Court in increasing the rate of compensation to 0.75 paise per sq. ft. has given no reason. The High Court in this regard observed as under:

"Thus, after going through the oral as well as documentary evidence and material placed on record and after hearing the learned counsel for the Trust as also appellant No.1 and also after going through the case law cited, the question arises at what rate compensation should be paid for the land which is compulsorily acquired. It cannot be disputed that either party No.1 nor party No.2 was making any use of the land at the time of acquisition. On the contrary it was being treated as a waste and fallow land having no importance. is not satisfactory evidence placed on record to prove that in fact the land was being used as an agricultural land from which certain income was derived. It appears this land gained importance only when the trust proposed to acquire the same. Therefore, though the principles enunciated in the various authorities cited and referred to above are not disputed, we are of opinion that considering the facts and circumstances of the case it would be just, proper and reasonable to award compensation for the land at the rate of 0.75 per square feet and not more because the price fetched for the developed lands also the price fetched for the small plots of land cannot be taken into consideration for purposes of comparison in respect of such big lands. After all for a developed plot of land the cost of development has also to be taken into consideration which cannot be said to be quite meagre. Besides, admittedly there is a big nala in the land in question, that there Was no direct independent road to approach this land and that even the factory was also not working for several years before the acquisition. All these facts indicate that the potential value of the land even as a building site was not so high."

12. Learned Distt. Judge after considering large number of documentary evidence placed on record by both the parties arrived to the conclusion that the fair market price of the acquired land on 22nd August, 1964 was 0.65 per Sq. Ft. The finding recorded by the Distt. Judge in this regard was based on adequate aterial placed on record and supported by good reasons. In our view the High Court went wrong in increasing the rate from 0.65p. to 0.75p. without any valid reasons whatsoever. As a result of the findings recorded above, the appeals Nos. 1345 and 1346 of 1986 filed by Kantilal and others are allowed. The appellants therein would alone be entitled to claim the entire amount of compensation. The orders of the High Court Addl. Commissioner and Collector in the matter of mutation proceedings are set aside and that of the Board of Revenue is upheld. The Appeal No. 3426 of 1987 filed by the Trust is allowed in part. The market value determined by the High Court at the rate of 0.75 per sq. ft. is set aside and the rate determined by the District Judge at 0.65p. per sq. ft. is maintained. In the facts and circumstances of the case, there would be no order as to costs.

Appeal partly allowed.

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