

CASE NO.:
Appeal (civil) 7105 of 1999

PETITIONER:
A.P. NAYAR & ORS.

RESPONDENT:
REHA. MIN. EMP. COOP. HOUSE BLDG. SOC. LTD. & ORS.

DATE OF JUDGMENT: 24/04/2006

BENCH:
B.P. SINGH & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

P.K. BALASUBRAMANYAN, J.

1. This appeal is by the contesting respondents in C.W. No.3786 of 1992 on the file of the High Court of Delhi. The Rehabilitation Ministry Employees Cooperative Group Housing Society Limited (for short "the Society"), respondent No.1 herein, filed the said writ petition challenging an order of the Appellate Officer under the Evacuee Interest (Separation) Act, 1951 (for short "the Separation Act") by which the Appellate Officer allowed an appeal filed by the contesting respondents under Section 14 of that Act and set aside the order of the competent officer rejecting an application made by the contesting respondents under Section 10 of the Act. The Appellate Officer had set aside the order of the competent officer dated 30.05.1986 and remanded the matter back to the competent officer for deciding the claim of the contesting respondents afresh in accordance with law. The High Court allowed the writ petition filed by the first respondent\027society and set aside the order of the Appellate Officer dated 4.8.1992, by holding that the society was a lessee of the land in question and the contesting respondents before it, the appellants herein, have no right, title or interest in the land in question except a right to receive compensation under the Resettlement of Displaced Persons (Land Acquisition) Act, 1948, hereinafter called "the Acquisition Act". The possession of the writ petitioner\027society was also upheld. The contesting respondents were restrained from interfering with the possession of the society. Feeling aggrieved by the said decision, this appeal is filed by the contesting respondents before the High Court, hereinafter referred to as "the appellants".

2. It is claimed by the appellants that their predecessor in interest one Gopal Dass had purchased the land in question, being two bighas in Khasra No.167 Village Begampur, Delhi from one Mohd. Sharauddin by means of a registered sale deed dated 07.05.1955 pursuant to which possession was delivered over to Gopal Dass. According to them, the rights that Gopal Dass thus acquired still survive and they were entitled to have the right and possession of Gopal Dass and of themselves as his successors in interest recognized and upheld. This claim is resisted on the plea that the land in question stood vested in the Government in the year 1949 itself much before the alleged sale deed was taken

by Gopal Dass from Sharauddin; that the said deed conferred no right on Gopal Dass or on his successors and that the appellants have no claim, right or possession over the property. The land had subsequently been leased to the Society and the Society was in possession thereof. This defence was upheld by the High Court which held that the appellants had only a right to receive compensation for the acquisition and it is the correctness thereof that is in question in this appeal.

3. The land in question, according to the appellants, was held in co-ownership by one Mohd. Sharauddin and others. The co-owners migrated to Pakistan on partition. But Mohd. Sharauddin continued to be a non-evacuee. On 13.09.1948, a Notification under Section 3 of the Acquisition Act was issued, which took in Khasra No. 167, the property involved herein. It is the appellants' case that no further action was taken pursuant to that Notification, no notice has been issued to the owner Sharauddin and possession was never taken by the acquiring authority. It was while so that the property was sold to Gopal Dass, the predecessor of the appellant by deed of sale dated 7.5.1955. In the year 1958, the custodian of Evacuee Property laid information before the competent officer under the Separation Act with a claim that one out of three shares in the composite property belonged to the non-evacuee. The competent officer after directing issue of notice to all interested persons including the non-evacuee, by order dated 29.5.1958, declared that the entire land had vested in the custodian free from all encumbrances and liabilities. On 12.07.1958, Najmuddin, Mohinuddin and Wahabuddin, the sons of Sharauddin filed a claim before the competent officer pleading that their father Sharauddin was a co-owner of the land in question; that Sharauddin had died on 15.04.1958; that the order dated 29.05.1958 be set aside and their claim be allowed. The competent officer by his order dated 10.10.1958 held that one-third of the properties involved, including Khasra No. 167, belong to the heirs of Sharauddin and the two-third was evacuee share and framed a partition scheme and subsequently adopted it by order dated 26.02.1959. According to the appellants, on 4.4.1964, Gopal Dass sold one-fourth share in Khasra No. 167 to one Ved Prakash and on 19.5.1964 another one-fourth share to one Giyan Chand. It is the claim of the appellants that mutation in respect of the land was effected in favour of Dr. Gopal Dass on 30.05.1972.

4. Meanwhile, the Society was formed in the year 29.10.1959 and the Society was allotted 60 acres of land including the two bighas in Khasra No. 167, out of the compensation pool created under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the Rehabilitation Act"). That allotment was made on 6.6.1972. According to the Society, physical possession of the allotted land was handed over to it on 13.6.1972 and mutation was also effected in the name of the Society. On 7.5.1979, the allotment to the Society was cancelled and orders to receive compensation were issued by the Government. The Society thereupon approached the High Court challenging the cancellation. On 1.9.1980, a learned Single Judge of the High Court allowed the Writ Petition filed by the Society and quashed the order of cancellation. The respondents in the Writ Petition were also directed to complete the process of transfer of land within a period of three months. The Letters Patent Appeal, LPA No. 254 of 1980 filed against that decision, was dismissed by the Division Bench on

5.1.1981. The Delhi Development Authority challenged the decision further in this Court. In this Court, a compromise was entered into by the Society and the Ministry of Rehabilitation. Accepting the compromise, this Court on 6.5.1982 disposed of the appeal filed by the Delhi Development Authority as withdrawn. The compromise was annexed to the order. As per its terms, the allotment in favour of the Society was reduced from 60 acres to 45 acres. To give effect to the terms of the compromise decree, a letter of allotment dated 7/9.6.1982 was issued to the Society giving the details of the allotted land and the same was followed up by delivery of possession. The land so delivered over as can be seen from the relevant document produced in the High Court as Annexure P-10 included Khasra No. 167. A perpetual lease in respect of the 45 acres in favour of the Society was executed on 28.8.1989. Thus, it is the case of the Society that it was in possession of the land pursuant to such allotment and that the appellants have no right or possession over the same.

5. It may be seen that the properties were separated, as per the order dated 26.2.1959 and the share of Sharauddin allotted to his sons. Such allotment to them did not take in Khasra No. 167. It is seen that Gopal Dass on 30.4.1979, 20 years after the separation order, purported to file revision petitions under the Separation Act challenging the order of separation. That revision was entertained and allowed by the Appellate Officer apparently without a proper application of mind to the relevant aspects that arose for decision in such a belated challenge. The order of separation was set aside and the matter was remanded to the competent officer. The competent officer by order dated 30.5.1986 held that the land in question was acquired by the Government under the Acquisition Act and the award was passed on 7.5.1962. The acquisition of the land was complete before Sharauddin, the non-evacuee co-sharer transferred his rights in favour of the Gopal Dass. Consequently, Gopal Dass could succeed only to that much interest in the property which his predecessor in interest had at the time of the transfer in his favour. He held that since the acquisition was complete, there could be no partition. Gopal Dass and others challenged the said order by way of an appeal under Section 14 of the Separation Act. By Order dated 04.08.1992, the Appellate Officer set aside the order passed by the competent officer and remanded the matter to the competent officer for deciding the matter afresh. It was this order that was challenged by the Society in the Delhi High Court, which resulted in the judgment under appeal upholding the claim of the Society that the successors-in-interest of Gopal Dass could not claim any title, interest or possession over the Khasra No. 167, other than the compensation that was awarded for the acquisition.

6. At the hearing, the learned Senior Counsel for the appellants contended that the documents produced and the additional affidavit filed in this Court clearly indicate that the land in question was not the subject matter of acquisition under the Acquisition Act and consequently, the very basis of the claim of the Society and the other objectors stood removed. The learned counsel submitted that if so, Sharauddin had a right to convey his share to Gopal Dass and Gopal Dass in his turn could deal with the property thus obtained by him. Since, there was no acquisition, there was no question of loss of title or possession of Gopal Dass and his successors-in-interest. On the other hand, learned counsel for the Society and for the Union of India submit that the documents clearly show that the land was acquired; that acquisition proceedings were complete and the allotment to the society thereof was

made and under the circumstances, the High Court was fully justified in holding that the appellants herein were at best only entitled to compensation for the acquisition and were not entitled to anything more.

7. It may be indicated here that even in the memorandum of appeal in this Court, there was no specific contention that there was no acquisition under the Acquisition Act. But, learned Senior Counsel for the appellants explained that the position emerged in view of the further pleadings in this Court and the records produced and the omission of Khasra No. 167 from the list of lands acquired. He submitted that in that context, the point was being urged especially in view of the fact that the case of the Society was that the rights of Sharauddin had been acquired under the Acquisition Act.

8. We have perused the relevant documents produced, including the Notification dated 13.9.1948, the record relating to taking over of possession dated 4.7.1949 and 29.9.1949, the award dated 7.5.1962 the pleadings of the parties and the reasons given by the High Court for coming to the conclusion that the land was in fact acquired under the Acquisition Act. On the basis of the materials available, it is not possible to accept the contention of learned Senior Counsel, that the land in question has not been acquired as claimed by the appellants. It is seen that as per the Notification dated 13.9.1948, an extent of 505.3 acres were notified for acquisition for the resettlement of displaced persons. The land in Khasra No. 167 was included in the Notification. The notices by the Special Land Acquisition Collector were published in the Gazette of India on 25.7.1949. It is seen that by Notification dated 16.6.1949, the Additional Custodian of Evacuees' Property in exercise of his power under Section 6(1) of the East Punjab Evacuees (Administration of Property) Act, 1947 assumed possession of or control over all rights and interests in the land and houses in the rural areas of the Province of Delhi belonging to all the Muslims except those mentioned in the Schedule annexed to the notification. In that Schedule, the names of Muslims present in the Village Begampur have been listed. The names of Mohd. Sharauddin and his co-owner do not appear in the Schedule. It was therefore apparent that the land in Khasra No. 167 was taken over by the Addl. Custodian of Evacuees Property on 16.6.1949.

9. It is also not possible, on a proper advertence to the documents relating to the acquisition, to accept the contention of the learned Senior Counsel for the appellants that Khasra No. 167 was not the subject matter of acquisition. On the facts and in the circumstances of the case, the High Court, in our view, is right in holding that the land in question was acquired under the Acquisition Act and it had vested in the Authority under that Act. It is also seen from the separation order earlier made that two bighas in Khasra No. 167 was not set apart to the share due to Sharauddin. It formed part of the two-third share that belonged to the evacuees. The same had therefore vested in the Custodian of Evacuee Property. It may be noted that one of the sons of Sharauddin was present before the competent officer on 26.2.1959 and had not objected to the scheme of partition. Thus the subsequent conduct of one of the sons of Sharauddin in applying for the allotment of some other land on the basis that a part of the property had been acquired, also supports the position that the land was part of the land acquired under the Act. We may also notice, that the award passed as early as on 7.5.1962 was

not challenged by the heirs of Sharauddin. They also accepted the separation and Gopal Dass attempted to get the position unsettled only in the year 1979. If as he claims he had obtained title and possession of this land by virtue of the sale dated 18.5.1955, it is difficult to imagine that he took no attempt to assert his rights in it till the year 1979. Thus, on the whole, the finding that Khasra No. 167 was part of the land acquired under the Acquisition Act is not shown to be incorrect and hence it does not call for any interference.

10. Once that position is accepted, it is clear that the land was subsequently allotted to the society and granted on perpetual lease to that Society, though by way of a compromise decree passed in this Court. But once the completion of the acquisition in respect of the land is found, it is clear that the right, if any, of Gopal Dass and his successors can only be to the compensation that was awarded under the Acquisition Act, 1948. No other right or possession could be claimed by Gopal Dass and his successors since the conveying of the right in favour of the Gopal Dass in respect of the Khasra No. 167, was only after the same had been acquired under the Acquisition Act.

11. Thus, on an anxious reconsideration of the relevant aspects, in the light of the relevant documents brought to our notice in great detail by learned Senior Counsel appearing in the case, we are satisfied that the decision of the High Court does not call for any interference in this appeal. Consequently, we confirm the decision of the High Court and dismiss this appeal. In the circumstances, we direct the parties to suffer their respective costs.