IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5711 OF 2004

R.B. LAKSHMI CHAND (D) THR. LRS. AND ANOTHER ...Appellants

VERSUS

UNION OF INDIA AND OTHERS ...Respondents

O R D E R

The predecessors of the appellants, who purchased 11 bighas 18 biswas of land comprising Khasra No.1319/139 and 140 situated in village Sadhorakhurd and 5 bighas 5 biswas bearing Khasra No.267/203 in village Nimri from Hazi Mohd. Jamshed Ali Khan by registered sale deed dated 22.8.1947, have been fighting litigation for the last 47 years for their constitutional and legal right to property.

The land of the appellants was taken over by the Government of India by issuing notification under Section 3 of the Re-Settlement of Displaced Persons (Land Acquisition) Act, 1948 (for short, 'the Act'). However, no notice under Section 4 was

served upon the appellants or their predecessors. Instead, the notice is said to have been served upon the Custodian on behalf of the persons who were recorded as the owners before 1947. The appellants represented for de-requisitioning the land. They also moved the Custodian for denotifying the land as an evacuee property. The latter accepted their request in 1958 but the Central Government did not release the land.

The appellants filed Suit No.82 of 1963 for grant of a decree for possession and mesne profits by asserting that they were owners of the land and the defendants had deprived them of their property without following due process of law. They

pleaded that without serving notice upon them under Section 4 of the Act, the Government of India could not have deprived them of their property. In the written statement filed on behalf of the official defendants (respondents herein), it was pleaded that the appellants do not have any claim over the land because their application for mutation was rejected. It was further pleaded that notice under Section 4 had been served upon the Custodian of evacuee property because the land in question was treated as an evacuee property.

On the pleadings of the parties, the trial Court framed the following issues:

(1)Whether the plaintiffs and defendant No.3 are the owners of the suit land as alleged? CPP

(2)Whether the land has been lawfully acquired under Act 60 of 1948 in accordance with the procedure prescribed in law? If not to what effect? OP.

(3) If issue No.2 is proved whether the defendant have not put the land to the use for which it was acquired? If so to what effect? OPP

(4) Whether the plaintiffs can sue for possession of the share belonging to defendant No.3? OPP

(5) Whether the plaintiffs are entitled to any amount by way of mesne profits? If so, at what rate and for what period? OPP

(6) Whether the notice under section 478 of the D.M.C. Act was served upon defendant No.2? If so, to what effect? OPP

(7) Whether the jurisdiction of the civil Court is barred in the matter? OPP

(8) Whether this Court's jurisdiction is barred under section 477 of the Delhi Municipal Corporation Act? OPP

(9) Whether the suit does not disclose a cause of action? OPD

(10) Whether the suit is not properly signed and verified and is liable to be rejected? OPD

(11) Whether the suit is not properly valued for purpose of court fee and jurisdiction? OPD 2

After considering the pleadings and evidence of the parties and hearing their advocates, the trial Court vide its judgment

dated 28.9.1967 decreed the suit. The appeals preferred by respondent Nos.1 and 2 were allowed by Additional District Judge, Delhi who held that the procedure prescribed under the Act had been followed in its letter and spirit and the appellants herein are not entitled to seek nullification of those proceedings by questioning the mode of service of notice issued under Section 4 of the Act.

The learned Single Judge of the High Court partly allowed the second appeal preferred by the appellants and recorded his conclusion in the following words:

> "In view of the above, one has to hold that any service of notice of Government on the Custodian must, therefore, be held to be illegal and consequently in absence of any appropriate service seizure and appropriation of profit was not complied to this regard. Statutory provision for the course adopted by the Government, there was no statutory sanction. Accordingly, the entire acquisition proceedings were illegal."

However, the learned Single Judge refused to pass a decree for return of the land and held that the appellants are entitled to adequate compensation which he assessed at Rs.85,312.50 with interest @ 6% per annum from 1.10.1954 till the date of payment.

We have heard Shri E.C. Agrawala, learned counsel appearing for the appellants and perused the record. We have also gone

through the record of the courts below. However, we do not have the benefit of hearing the counsel for the respondents because none has appeared on their behalf, a phenomena which is regularly witnessed by the courts.

From the record of the trial Court, it is revealed that at one stage the land purchased by the appellants had been declared as an evacuee property, but by an order dated 7.10.1958 of the Deputy Custodian General the same was denotified. It is also borne out from the record that vide letter No.1(9) 60-P&T dated 10.4.1962, Under Secretary to the Government of India, Ministry of Rehabilitation had informed Land Acquisition Collector, Tis

Hazari Courts that some portion of the land had been utilised for construction of quarters, link road etc., but some other portion is vacant and the Ministry does not have any programme for further construction and that surplus land can be re-conveyed to the ex-owners.

In view of the above, we may have passed a decree for return of the remaining land to the appellants but do not consider it proper to do so after a gap of 48 years more so because learned counsel for the appellants is not in a position to state whether the remaining land is still vacant and has not been utilized by the respondents. In our view, ends of justice

would be served if the appellants are compensated by increasing the value of the land and the rate of interest.

The learned Single Judge of the High Court had, after taking note of the value indicated in the sale deed, granted an enhancement of 50% with interest @ 6%. In our view, increase by 100% of the total value of the land with interest of 9% per annum would serve the ends of justice.

Accordingly, the appeal is partly allowed. While rejecting the appellants' prayer for restoration of the land, we direct respondent No.1 to pay Rs.1,13,750/- to the appellants along with interest at the rate of 9% per annum with effect from 1.10.1954 till the date of payment. This amount shall be paid to the appellants by the Department of Rehabilitation, Government of India within a period of three months from the date of receipt/production of copy of this order and a report be sent to this Court so that the appellants may not have to launch another round of litigation by instituting the proceedings under the Contempt of Courts Act, 1971.

.....J.
(G.S. SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI,
AUGUST 19, 2010.

ITEM NO.102 COURT NO.10 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5711 OF 2004

R.B. LAKSHMI CHAND (D) BY LRS.& ANR. Appellant (s)
VERSUS
UNION OF INDIA & ORS. Respondent(s)

(With office report)

Date: 19/08/2010 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s) Mr. E.C. Agrawala,Adv.
Mr. Rajesh Verma, Adv.

For Respondent(s) None present

UPON hearing counsel the Court made the following
O R D E R

In terms of signed order, the appeal is partly allowed. While rejecting the appellants' prayer for restoration of the land, we direct respondent No.1 to pay Rs.1,13,750/- to the appellants along with interest at the rate of 9% per annum with effect from 1.10.1954 till the date of payment. This amount shall be paid to the appellants by the Department of Rehabilitation, Government of India within a period of three months from the date of receipt/production of copy of this order and a report be sent to this Court so that the appellants may not have to launch another round of litigation by instituting the proceedings under the Contempt of Courts Act, 1971.

(A.D. Sharma) (Phoolan Wati Arora)
Court Master Court Master
(Signed Order is placed on the file)