

CASE NO.:

Appeal (civil) 3695 of 1997

PETITIONER:

U.O.I. THRU SECY. MINISTRY OF HOME AFFAIRS NEW DELHI AND ORS.

RESPONDENT:

A. AJIT SINGH S/O. S.CHET SINGH R/O. NO. 19, FAIZ BAZAR, DARYAGANJ, DELHI-6

DATE OF JUDGMENT: 29/04/1997

BENCH:

K. RAMASWAMY & S. SAGHIR AHMAD & G.B. PATTANAIK

JUDGMENT:

JUDGMENT

The following Order of the Court was delivered : Substitution allowed.

Leave granted.

This appeal by special leave arises from the judgment of the Delhi High Court, made on 18.8.1996, in RFA No. 87 of 1974.

The undisputed facts are that on January 25, 1949, the respondent was granted a lease of the Government land for 30 years with a right to further renewal from time to time, upto a maximum period of 99 years. Since the land was required for acquisition, notice was issued on July 23, 1960

terminating the tenancy of the respondent. The respondent filed an appeal before the Additional District Judge who held that the lease still subsisted and, therefore, the respondent could not be evicted. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the 'Act') was published on February 17, 1967 acquiring the land for planned development of the City of Delhi. The Land Acquisition Officer gave his award on June 6, 1967 determining the compensation @ Rs. 4,000 per bigha. On reference, the Additional District Judge, by his award and decree dated 2.11.1973 enhanced the compensation to Rs. 17,000 per bigha; apportionment was also effected. On appeal by the State and by the claimant also, the High Court while affirming the apportionment of 75% to the tenant and 25% to the landlord, has enhanced the compensation to Rs. 28,387 per bigha. The High Court also applied the provisions of Amendment Act 68/84 and awarded the enhanced solatium, interest and additional amount. Thus, this appeal by special leave.

The High Court in the judgment has noted that the lands are situated in the developed area and are very near to the developed localities belonging to the private parties and Government. Therefore, it possesses the potential value for use for building purposes. Accordingly, it has determined the compensation @ Rs. 28,387 per bigha. We think that the determination of the market value on the basis of the above consideration is not vitiated by any error of principle.

The next question that arises for consideration is : whether the respondent is entitled to the benefit of the Amendment Act 68 of 1984? In view of the fact that the award of the reference Court is of November 2, 1973, the

Amendment Act would apply and, therefore, the claimants are entitled to the solatium at 15% and interest at 6% on the enhanced compensation from the date of taking possession till date of deposit in the Court.

The next question is : to what proportion the landlord and the tenant are entitled to vis-a-vis the compensation? Though the appellant had terminated the tenancy, on appeal, it was restored. Thereafter, they remained in possession as tenant. The appellant initiated the acquisition under the Land Acquisition Act, though the covenant in the lease deed provided the right of dispossession and for taking possession for public purpose. In view of the fact that the order become final and the possession was not taken, pursuant to the termination of the tenancy, and since the acquisition was initiated under the Act, the respondent is entitled- to the payment of the compensation. The right of tenancy is a right under which a tenant is entitled to enjoy the possessory title and enjoyment of the leased land subject to covenants relating to ejection after due determination of tenancy. It is seen that the lease was granted in 1949 and it was terminated in 1960 and the acquisition was initiated in 1967 on which date he continued to be in possession of the property; therefore, this Court has to consider the apportionment of the compensation on that basis. The judgment in *Mangat Ram & Ors. v. State of Haryana & Ors.*, [1996] 8 SCC 664 relates to the commercial premises which was acquired by the Government and the apportionment of the compensation was made at 75% and 25% to the tenant and the landlord respectively. It was challenged by the landlord for full payment. In that perspective, this Court upheld the grant of the apportionment at 75% and 25% to the tenant and the landlord respectively.

The case of *Inder Parshad v. Union of India & Ors.*, [1994] 5 SCC 239 relates to the acquisition of the nazul land in respect of which lease was granted for 99 years to the tenant. On reference under Section 30, the reference Court had apportioned the compensation @ 2/3rd and 1/3rd to tenant and landlord respectively. That order was modified on appeal by the High Court at 75% and 25% respectively. The State did not file any appeal; the tenant claimed the entire compensation in the appeal. This Court upheld the determination at 75% and 25% between the tenant and the landlord respectively.

In *Col. Sir Harinder Singh Brar Bans Bahadur v. Bihari Lal & Ors. Etc.*, [1994] 4 SCC 523 since under the Tenancy Act, the tenant is entitled to the entire land, this Court held that the tenant is entitled to the total compensation and the landlord is not entitled to any compensation. In view of the fact that the appellant is challenging the apportionment, we think that 60% of the compensation to the tenant would be justified. The Court is required to take into consideration relevant factors, viz., the duration of the lease, the nature of the right to enjoyment of the lease-hold interest and the improvements the tenant made on the land etc. It is equally settled law that if the Government is the owner of the land, before initiating the acquisition, it is entitled to terminate the lease and take possession of the lands b terms of the lease. Necessarily, in the above case tenant cannot have any right to compensation as he is bound by the terms of the lease. In a case where the Government in spite of the covenant contained in the sale deed, chooses to acquire the land, necessarily the tenancy right of a tenant is required to be assessed and the compensation has to be

awarded suitably. In view of the fact that the lease is for 99 years and the part of the lease has been enjoyed for a period of 18 years, we think that the apportionment of the compensation in the ratio of 60% to the tenant and 40% to the landlord would be reasonable ratio and payment should accordingly be made.

The appeals are accordingly allowed to the above extent, but, in the circumstances, without costs.