

PETITIONER:
INDER PRASHAD

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT 13/01/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1994 SCC (5) 239 1994 SCALE (2) 553

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The appellant admittedly was a lessee of Nazul land admeasuring 3.1 acres or thereabout situated at Block No. 160 in Delhi having had perpetual lease from the Government of India on June 14, 1934 on payment of premium of Rs 10,850 and annual rent with stipulations that "and of the land hereinafter reserved and of the covenants on the part of the lessee hereinafter contained, the lessor doth hereby demise unto the lessee all the plot of land containing..... He was also entitled to retain the demise land in perpetuity subject to the right of the lessor to enhance the rent and the right to re-entry upon the demised land on breach of the covenants. The appellant with permission of the lessor constructed a building on the demised land and was in its quiet enjoyment, complying with the covenants. By a notification dated March 5, 1967 published in the Gazette under Section 4(1) of the Land Acquisition Act, 1894, for short 'the Act', the demised land together with the building, along with other lands was acquired for a public purpose. The Land Acquisition Collector by an award dated March 26, 1973 awarded compensation with the following observations:

"Thus the land under acquisition is a leasehold held at present on lease by the claimant Shri Inder Parshad. The land is Nazul which was given on a perpetual lease by Chief Commissioner, Delhi on an yearly rent of Rs 542/8/- (Rs 542 and 8 annas, i.e. Rs 542.50 P) per annum. The perpetual lease is subject to the performance of certain covenants including prior permission of the lessor to assign the land to third parties....

All urbanisable land in Delhi is covered by the master plan which was framed under the Delhi Development Act, 1957. The total compensation payable in respect of interest of

lessor and lessee is not, however, arrived at by separately calculating the interest of the lessor and the lessee. It is necessary that the amount should be divided between them in such proportion as represents the value of their respective shares."

2. After determining the compensation the Collector, who was not able to decide at what proportion the appellant and the Government were entitled to receive the compensation, made a reference under Section 30 of the Act to

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the civil court. The District Court by judgment dated November 15, 1976 held that the Government and the appellant were entitled to compensation at the proportion of 33% and 67% respectively. On further appeal by the appellant, while upholding the title to the compensation by the Government and the appellant, the High Court altered the proportion to 75% and 25% between the appellant and the Government respectively. The Government did not question the said proportion at which the compensation was payable to the appellant and the respondent. The appellant being aggrieved for apportionment of 25% of the compensation in favour of Government filed this appeal by special leave.

3. Sri Kailash Vasudev, learned counsel for the appellant, contended that the Government being the owner of the land cannot acquire its own interest therein. What was acquired is only of the sum total of the right and interest held by the appellant in the perpetual lease and, therefore, the appellant is entitled to the total compensation determined by the award. In support thereof he placed reliance on Collector of Bombay v. Nusserwanji Rattanji Mistri 1. With a view to appreciate the contention it is necessary to see the relevant provisions of the Act.

4. It is seen that after making the award under Section 11 and deposit of the compensation, the Land Acquisition Collector is entitled under Section 16 of the Act to take possession of the land for that provision says that "the land shall thereupon vest absolutely in the Government free from all encumbrances". Thus by exercise of the power of eminent domain Government has divested the pre-existing right, title and interest held by the lessee of the land which stood vested absolutely in the Government free from all encumbrances thereafter. But, the Land Acquisition Officer in his award under Section 11 has fixed the compensation payable not only for the pre-existing right, title and interest of the lessee but also of the lessor the Government.

5. In this case admittedly the Government being the owner of the land, the appellant held the demised land as lessee with superstructure built thereon and was in possession and enjoyment of the same on the date of acquisition. The contents of the award extracted hereinbefore clearly indicate that the Land Acquisition Collector could not determine compensation payable towards the leasehold interest held by the appellant. Being an owner the Government is not enjoined to acquire its own interest in the land or land alone for public purpose. When its land is granted on lease in favour of a lessee its power to resume the land is subject to non-fulfilment of the terms and conditions of the lease by the lessee. So long as the lessee acts and complies with the covenants contained in the lease or the grant, the right to resumption in terms of the lease or grant would not arise. But when the land is required for public purpose, the Government should get absolute title thereof free from all encumbrances.

Compensation becomes payable for the leasehold right or interest held by the lessee or grantee when the land is

1 (1955) 1 SCR 1311 : AIR 1955 SC 298

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acquired. The point becomes clear from the following illustrations. Take a case where the Government granted lease of agricultural land on the annual payment of rent with a covenant that the Government is entitled to resume the land when needed for public purpose or as when the Government finds that the land is required for public purpose. In terms of the covenants, the Government is entitled to exercise its option to determine the lease though the lessee has been complying with the condition of payment of annual premium or rent and resume the land in accordance with terms of the grant. In that event the need to take recourse to acquisition and to make compensation does not arise. Take a case where the Government granted the lease of the open land with, permission to the lessee to construct a building for his quiet enjoyment with appropriate covenants and the lessee with permission constructed the building and by complying with the covenants of the lease was in quiet enjoyment. The self same property, when required for public purpose, the Government cannot unilaterally determine the lease and call upon the lessee to deliver the possession. Therefore, the Government is required to exercise the power of eminent domain by invoking the provisions under the Land Acquisition Act for getting such land. The Collector shall have to determine the compensation towards the leasehold interest held by the lessee, if assessable separately and determine the compensation. The lessee being the owner of the superstructure and the Government being the owner of the land, if compensation is determined for both the components, then the same has to be apportioned between them. At what proportion the lessor and the lessee are entitled to receive the compensation has to be determined. In the absence of any covenant in the lease for payment and in the absence of any specific data available to him, the Collector has to determine the respective shares at which the compensation is to be apportioned between the Government and the lessee, the course open to the Land Acquisition Collector is to determine the total compensation, make an award and make a reference to the civil court under Section 30 for decision on appointment. Exactly that is the situation on the facts of this case. Take another illustration. The Government grants a patta of its land subject to payment of land revenue. Later, the land is required for public purpose. The payment of land revenue is at par with the payment of land revenue payable by a private owner to the State. By grant of patta, the title has been vested in the grantee. Therefore, the grantee is entitled to the full compensation of the acquired land.

6. The Land Acquisition Collector determined the compensation for the sum total of the right, title and interest held by the lessor and the lessee together and made a reference to the civil court under Section 30 to determine the proportion in which the lessor and the lessee are entitled to receive the compensation. In a given case where it is possible to determine the compensation payable towards leasehold interest, it could also be done and the compensation payable towards the interest held by the lessee could be deposited in the Court and paid subject to the provision in the Act. Since the Land Acquisition Collector was not in a position to determine the

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proportion in which the said compensation had to be paid to the appellant and the lessor-Government, he made a reference to the civil court under Section 30.

7. In Nusserwanji Rattanji Mistri case' the facts are as under:

8. In the island of Bombay certain lands were held on a tenure known as "Foras". Under Section 2 of Bombay Act VI of 1851 the occupants were entitled to hold the lands subject only to the payment of revenue then payable. Between 1864 and 1867 the Government of India acquired these lands under the provisions of the Land Acquisition Act (VI of 1857). On November 22, 1938 the Governor-General sold them to certain persons under whom the present respondents claimed. In April 1942 the appellant acting under the Bombay City Land Revenue Act (Bombay Act 11 of 1876) issued notices to the respondents proposing to levy assessment on the lands at the rates mentioned therein. The respondents thereupon instituted two suits disputing the right of the appellant to assess the lands to revenue. They contended that under the Foras Land Act the occupants had acquired the right to hold the lands on payment of revenue not exceeding what was then payable, that the right to levy even that assessment was extinguished when the Government acquired the lands under the Land Acquisition Act, that the Governor-General having conveyed the lands absolutely under the sale deed dated November 22, 1938 the respondents were entitled to hold them revenue free and that even if revenue was payable it could not exceed what was payable under the Foras Land Act. On those facts this Court held that if the Government has itself an interest in the land, it has only to acquire the other interests outstanding therein, so that it might be in a position to pass it on absolutely for public use. And the Act primarily contemplates all interests as held outside Government and directs that the entire compensation based upon the market value of the whole land must be distributed among the claimants. When the Government possessed an interest in land which is the subject-matter of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own, an investigation into the nature and value of that interest will no doubt be necessary for determining the compensation payable for the interest outstanding in the claimants but that would not make it the subject of acquisition. In that case since the claimants are entitled to pay only land revenue and thereafter since sale of the land was made, the pre-existing right in the land which the Government had ceased and claimants became owners. Therefore it was held that the claimants alone were entitled to the full compensation. But on the facts in this case, it is seen that since the Land Acquisition Collector had determined the compensation of the sum total of the interests held by the lessor and the lessee in the land under acquisition but being not able to decide on the apportionment of such compensation between Government and the appellant reference was made to the civil court to determine the apportionment. The civil court decided by its award that apportionment of compensation fixed in the award of the Land Acquisition Collector between the lessee-claimant and the Government-landlord shall be

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in order of 67 per cent and 33 per cent. The High Court by its judgment and decree under the present appeal has modified the apportionment of compensation payable for land as 75 per cent for the lessee and 25 per cent for the

lessor. Under these circumstances it cannot be said that the Land Acquisition Collector had determined the compensation only towards the leasehold interest held by the appellant and that, therefore, the appellant is entitled to the entire compensation determined by the Collector. Therefore, the judgment and decree under appeal does not call for interference and the appeal is, accordingly dismissed. But in the circumstances, the parties are directed to bear their own costs.

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JUDIS