
(2005) 05 PAT CK 0073
In the Patna High Court
Case No : CWJC No. 4301 of 2005

Anandi Prasad and Anr

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-05-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 4, 6

Citation : (2005) 3 PLJR 465

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Mrigank Mauli and Vinay Mistry, for the Appellant; J.P. Kishore for the State and Mr. Hemendra Pd. Singh for Respondents 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh, J.—On the subject plot of land the petitioners constructed certain shops. It was contended on behalf of the State that the petitioners have encroached upon the said plot of land and after encroachment they have constructed the shop in question. Accordingly, steps were taken under the Land Encroachment Act. In terms of the said Act an order was passed on 4th October, 1983. The petitioners challenged the validity of the said order by filing C.W.J.C. No. 6007 of 1983. By a judgment and order dated 26th September, 1995 a learned Single Judge of this court allowed the writ petition and quashed the said order dated 4th October, 1983. While setting aside the said order the learned Single Judge directed as follows: "However, it will be open to the authorities to move before the appropriate court of law for deciding the title first, and thereby to take any decision, in accordance with law."

An appeal filed against the said judgment and order was withdrawn.

2. In such view of the matter, each of the respondent in C.W.J.C. No. 6007 of 1983 was obliged to obtain a decision from a court of law before once again

stepping on to the plot of land in question or on to shops constructed thereon.

3. Subsequent thereto, once again the petitioners approached the court by filing yet another writ petition and contended that the respondents in C.W.J.C. No. 6007 of 1983, without approaching a court of law and without obtaining any decision therefrom on the title to the land in question, have taken steps to demolish the concerned shops. The State-respondents filed a counter-affidavit to the said writ petition and therein contended that they have not touched the shops in question. The petitioners thereupon withdrew the said writ petition.

4. One of the respondents in C.W.J.C. No. 6007 of 1983 and also the person, who filed the counter-affidavit on behalf of the State-respondents in the subsequent writ petition, issued a notice on 22nd February, 2005 informing the petitioners that the petitioners are standing in the way of taking of measurement of land including of that plot of land. It is the case of the petitioners that subsequent thereto without considering the reply given by the petitioners on 5th March, 2005, the State-respondents demolished the shops in question. It, however, appears that the Circle Officer passed an order on 5th March, 2005 and therein had indicated that steps cannot be taken against the petitioners in view of the order passed in C.W.J.C. No. 6007 of 1983. In such view of the matter, it does not appear that the Circle Inspector or any other State Authority has demolished the shops of the petitioners, but the fact remains and which is admitted in no uncertain terms in the counter-affidavit filed by the respondent No. 4 that the shops of the petitioners on that plot of land have been demolished.

5. It is the case of respondent No. 4 that in respect of the plot of land in question a Notification u/s 4 of the Land Acquisition Act, 1894 was published on 2nd December, 1981 followed by a declaration u/s 6 of the said Act published on 1st September, 1982 and thereupon an Award was made and published on 11th November, 1986. It is the further contention of the respondent No. 4 that in such view of the matter the land stood vested in the Government, and after the land vested in the Government the Government made over the same to the respondent No. 4 and the respondent No. 4 has decided to construct shop after removing whatever is lying thereat. The learned counsel for the respondent No. 4 submitted that while this court considered the claims in C.W.J.C. No. 6007 of 1983, the matter pertaining to acquisition of the land had not been taken note of. It was submitted that possession of the land was given to the respondent No. 4 in the year 1986 itself and inasmuch as this aspect of the matter had not been considered by this court at that stage and inasmuch as the respondent No. 4 was not a party to C.W.J.C. No. 6007 of 1983, it could not be brought to the notice of this court that during the pendency of the said writ petition and before the judgment was rendered therein the title to the property vested in the respondent No. 4.

6. The respondents, who purport to hand over the possession to the respondent No. 4, i.e. the State-respondents, were parties to C.W.J.C. No. 6007 of 1983. If the land had been acquired by taking recourse to Land Acquisition Act then the

same ought to have been brought to the notice of this court before the judgment was rendered in C.W.J.C. No. 6007 of 1983. A person who has acquired title through another cannot have a better right, as has been claimed by respondent No. 4. In the instant case the respondent No. 4 has derived title from the respondents in C.W.J.C. No. 600/ of 1983. The respondent No. 4 is, therefore, equally bound, as the respondents in C.W.J.C. No. 6007 of 1983 are bound, by the judgment rendered therein.

7. In the subsequent writ petition a contention was raised that the shops in question are being demolished. The respondent No. 4 was a party to the said writ petition and contented the same by filing a counter-affidavit. It was, thus, clearly brought to the notice of respondent No. 4 the existence of judgment and order rendered in C.W.J.C. No. 6007 of 1983 but despite that, respondent No. 4 did not take any steps, to have the said judgment altered by taking appropriate recourse to law.

8. In any event, by the amendment effected to the Land Acquisition Act, 1894, with effect from 4th September, 1984 Section 11A had been inserted therein. In terms thereof if an Award is not made within a period of two years from the date of publication of the declaration, the entire proceeding for acquisition will lapse. In terms of the proviso contained in Section 11 (a) of the said Act, where the declaration has been published before commencement of the amendment, the Award shall be made within two years from such commencement. As aforesaid, the amendment commenced on 4th September, 1984 and inasmuch as the declaration had been made and published before 4th September, 1984 it was obligatory on the part of the Collector to make and publish the Award on or before 4th September, 1986. Admittedly, according to the submission of the learned counsel for the respondent No. 4, the Award was made and published on 11th November, 1986. In such view of the matter, the entire acquisition proceeding having lapsed neither the State-respondents acquired any title to the property nor they can make the same available to the respondent No. 4

9. It is surprising that in the Award said to have been made on 11th November, 1986 it has been provided that the owners of the land will not get the compensation but the money will be deposited with the treasury for public good. This is impermissible.

10. I have, therefore, no other option but to hold that the respondent No. 4 without any rhyme or reason and having no title to the property trespassed into the land belonging to the petitioners and demolished the structures standing thereon. Accordingly, I allow this writ petition and direct the respondent No. 2 to forthwith restore back the land in question to the petitioners and to see to it that until the same is acquired by taking appropriate recourse to law and until title dispute in relation thereto is decided by a court of law, no one, except the petitioners and their nominees and heirs, steps on to the land or encroaches upon the same in any manner whatsoever. The respondent No. 4 is directed to pay a sum of rupees fifty thousand to the petitioners for restoration of the shops

demolished by the said respondent without any Authority of law. Such payment shall be made within a period of twelve weeks from the date of service of a copy of this order upon the respondent No. 4.