
(2012) 01 PAT CK 0042
In the Patna High Court
Case No : CWJC No. 20709 of 2011

Arun Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 29, Order 41 Rule 5
Land Acquisition Act, 1894 — Section 18

Citation : (2012) 3 PLJR 134

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—I have already heard the Learned Counsel Mr. Anirudha Kumar Verma on behalf of the petitioner and the Learned Counsel Mr. Ajay Kumar Sharma A.C. to A.A.G.-I on behalf of the respondent State of Bihar. This application under Article 227 of the Constitution of India has been filed by the decree-holder petitioner against the order dated 28.7.2011 passed by Sub-Judge-I, Aurangabad in Execution Case No. 3 of 2007 whereby the learned court below rejected the application dated 2.2.2011 filed by the petitioner praying for to proceed with the execution case for the execution of the award passed in land acquisition case.

2. It appears that 3.97 acres of land was acquired by the State of Bihar for the purpose of construction of Sondih Distributory Canal. The respondents sent notice to the mother of the petitioner and an award was prepared. The mother of the petitioner filed an application u/s 18 of the Land Acquisition Act for enhancement of compensation which was referred to the Land Acquisition Judge i.e. Sub Judge-I, Aurangabad. It was numbered as "L.A. Case No. 79 of 2003. The compensation was enhanced and judgment and award was passed on 1.3.2006. Being aggrieved by the said judgment and award the State of Bihar respondent has filed First Appeal No. 106 of 2006 before the High Court which is

still pending. On the death of mother the present petitioner filed Execution Case No. 3 of 2007 for the execution of the award made by the Land Acquisition Judge. The respondent State of Bihar filed stay application before the High Court which was rejected by terms of order dated 14.12.2010. It appears that prior to that on the application of the State of Bihar respondent by terms of order dated 13.2.2009 the execution proceeding was stayed by the executing court on the ground that Title Suit No. 134 of 2006 filed by the other co-sharers claiming title and interest over the property acquired against the present petitioner is pending.

3. After rejection of the stay application filed by the State of Bihar respondent by the High Court the petitioner filed application before the executing court bringing these facts to the executing court and prayed for that since there is no stay granted by the High Court the executing court Should proceed in the execution case which has been rejected by the executing court by the impugned order.

4. The Learned Counsel for the petitioner submitted that the executing court has no jurisdiction at all to stay the further proceeding of the execution case particularly, when the prayer for stay of the execution case has been rejected by the High Court. The Learned Counsel further submitted that the award is in the nature of money decree and, therefore, also the learned court below could not have stayed the proceeding without any condition. According to the Learned Counsel the executing court has misinterpreted the order passed by the High Court saying that the order has been passed by the Registrar General and the petitioners have not challenged the order passed by the executing court staying further proceeding on 13.2.2009.

5. On the other hand, the learned AC to AAG-I appearing on behalf of the respondent State of Bihar submitted that the co-sharers of the present petitioner have filed Title Suit No. 134 of 2006 and they are also claiming a share in the property, therefore, the learned executing court has rightly stayed the further proceeding in executing case. If executing case is not stayed and the petitioner is allowed to receive the awarded amount then there may be future complication if at all the title suit filed by the co-sharer will be decreed.

6. Admittedly, the lands have been acquired by the State of Bihar. It is also admitted that the award has been prepared in the name of the petitioner/his mother. The co-sharers have filed Title Suit No. 134 of 2006 claiming right, title and apportionment of the compensation. It is also admitted fact that the plaintiffs of Title Suit No. 134 of 2006 are not the judgment debtor. In the present case, the award has been prepared in favour of the petitioner against the State of Bihar. The dispute as to whether the co-sharer will be entitled to receive any part of the compensation will be decided in Title Suit No. 134 of 2006 and that is in between the present petitioner and the plaintiffs of that suit. In such circumstances how the State of Bihar is aggrieved? If at all that suit will be decreed the plaintiffs will realize the amount from the present petitioner. In my opinion, therefore, the State cannot take any objection for payment of the compensation or deposit of the compensation in the execution case filed by the

present petitioner. The other aspect of the matter is that the stay application filed by the State of Bihar in First Appeal No. 106 of 2006 has already been rejected by the High Court. Therefore, the relief which was not granted by the High Court to the State of Bihar has indirectly been granted by the executing court by rejecting the petitioner's application. Admittedly, the State of Bihar never prayed before the High Court either for the review of the order rejecting the stay application or for modification of the same. Now therefore, the order passed by the executing court is superseding the High Court. There is no provision in C.P.C. for granting stay of the execution case by any court except the appellate court under Order 41 Rule 5 of the CPC or the executing court or the court who passed the award, under Order 21 Rule 29 of the Code of Civil Procedure. So far Order 41 Rule 5 is concerned the appellate court i.e. the High Court has already rejected the application for stay. So far Order 21 Rule 29 C.P.C. is concerned it is not applicable in the present case because the judgment debtor has not filed the Title Suit No. 134 of 2006. According to Order 21 Rule 29 C.P.C. if a suit is pending in any court against the holder of a decree of such court or of a decree which is being executed by such court, on the part of the person against whom the decree was passed, the court may on such terms as to security or otherwise as it thinks fit stay execution of the decree until the pending suit has been decided. The proviso to Rule 29 says that if the decree is award for payment of money, the court shall, if it grants stay without requiring security, records its reason for so doing. Therefore, in view of this provision there must be suit filed by the judgment debtor against the decree holder in the same court where the execution case filed by the decree holder is pending against the judgment debtors. Now therefore, the order passed by the court below is without jurisdiction. The power to stay execution should not be made whimsically or as a routine manner. The court should consider that the decree holder is not deprived of the fruits of his decree except good and sound reason. The power should be exercised only in exceptional cases where the interest of justice requires. Here the learned court below has only, rejected the application only on the ground that title suit is pending and the earlier order passed by the court below has not been challenged without considering the fact that subsequent to that the High Court has rejected the stay application. Therefore, automatically the order passed by the court below was superseded by the High Court. In my opinion, therefore, the impugned order is without jurisdiction. It is irrational and the court below has passed the same against the statutory provisions. In such circumstances, the impugned order is unsustainable in the eye of law. Accordingly, this application is allowed. The impugned order is set aside and the court below is directed to proceed according to law.