
(2015) 07 PAT CK 0131
In the Patna High Court
Case No : CWJC No. 8574 of 1997

Ashok Kumar Jaiswal and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 9

Citation : (2015) 3 PLJR 873

Hon'ble Judges : V.N. Sinha, J.

Bench : Single Bench

Advocate : J.S. Arora, M. Kumar and Rishi Raj, for the Appellant; Prabhat Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—In compliance of the order of the High Court dated 9.7.2015 Collector, Patna is present and has produced the payment register maintained in connection with Land Acquisition Case No. 8/1975-76 as also the photocopy of the map dated 7.5.1979 indicating large chunk of land including plot No. 564 (part) measuring an area of 62 decimals in Village-Bahadurpur, Patna City was acquired for the purpose of Housing Board and possession handed over to the Board on 22.7.1977. Heard learned counsel for the petitioners, the State, Bihar State Housing Board (hereinafter referred to as the Board) as also the Collector, Patna.

2. This writ petition was initially filed by Smt. Rama Devi, wife of Sri Sushil Kumar Jaiswal, who purchased 7.75 decimals of land in plot No. 564 under registered sale deed dated 12.4.1965 from Raghubir Yadav and others. In the light of the purchase made by Sri Jaiswal he was mutated in the records of the State. It is submitted on behalf of the petitioners that later a house was also raised over the said plot. Having raised the house Sri Jaiswal left for heavenly abode. His wife Rama Devi and the present petitioners continued to reside in the same house even after departure of Sri Jaiswal and continued to pay municipal

taxes. In the year 1997 the authorities of the Board put a red mark on the house proposing its demolition, as according to them the house stood raised on the part of plot No. 564 which was acquired for the Board. The present petition was thereafter filed by Smt. Rama Devi on 17.9.1997 asserting that the lands in question was excluded from the land acquisition proceeding initiated for the Board and the action of the Board to demolish the house is wholly without jurisdiction. It is further submitted that even if the acquisition was made on behalf of the Board the said acquisition is bad as neither Rama Devi nor her husband was ever served with any notice under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act). The lands/house in question has throughout remained in the possession of the petitioners and their family members. To support such submission reliance is placed on the information received from the office of the Land Acquisition Officer, Patna and with reference to Annexures-7, 8 it is submitted that no notice for the aforesaid proceeding was ever served on the petitioners. In this connection, learned counsel also placed reliance on the Division Bench order of this Court in the case of Nirmal Singh and Another v. The State of Bihar and Others bearing C.W.J.C. No. 2061 of 1990 disposed of under order dated 3.10.1991, Annexure-11 whereunder acquisition of survey plot Nos. 552, 553 of Village-Bahadurpur for the Board was quashed holding that the petitioners of the said case, raiyat of plot in question 552, 553 were not noticed under Section 4 of the Act, raiyats having not been served notice under Section 4 of the Act the acquisition of plot Nos. 552, 553 is bad to the extent petitioners of said writ case had interest in the two plots.

3. By filing counter affidavit on behalf of the State respondent Nos. 5, 6 have disputed the aforesaid submission. It is stated in paragraph 4 of the counter affidavit that total area of plot No. 564 is 0.62 acres out of which Sushil Kumar Jaiswal was raiyat of 7.75 decimals which was acquired under Land Acquisition Case No. 8/1975-76. There were five awardees in the said plot including Sushil Kumar Jaiswal. It is stated in paragraph 6 of the counter affidavit that notification under Section 4 of the Act was issued on 27.11.1973 and declaration under Section 6 was made on 1.5.1975. Notice under Section 9 was issued on 15.5.1975, typed copy whereof is annexed as Annexure-B to the counter affidavit wherefrom it, however, does not appear that any notice was served on Sushil Kumar Jaiswal. In this connection, counter affidavit paragraph 7 states that from the order-sheet dated 15.5.1975 it would appear that notice under Section 9 was issued to all landowners and from the order-sheet dated 30.5.1975 it appears that receipt of all notices given to different landowners was received. Such is the bald statement made by Deputy Collector without any record to suggest that notice was ever served on Sushil Kumar Jaiswal.

4. Collector, Patna with reference to valuation register submitted that compensation due to Sushil Kumar Jaiswal for acquisition of 7.75 decimals of land in plot No. 564 amounting to Rs. 9,920/- with interest payable on that amount amounting to Rs. 11,408/- was deposited in the treasury and such deposit was made because others appeared to collect the amount but Sushil

Kumar Jaiswal did not bother to receive the same, as such, administration had no option but to deposit the same in the treasury. Collector, Patna also pointed out with reference to the map dated 7.5.1979 that part of plot No. 564 which was left out of the acquisition is on the north-eastern boundary of the said plot and not on the south-western boundary abutting Bhootnath Road where petitioners are claiming 7.75 decimals of land in plot No. 564.

5. On 9.7.2015 declaration under Section 6 issued in connection with acquisition of the plot in question and other plots was referred to and this Court under order dated 9.7.2015 directed Collector, Patna to produce the map which is mentioned in the said declaration so that this Court may verify as to which part of plot No. 564 was actually acquired in the said acquisition. The map which has been produced is of 7.5.1979, as such, the said map cannot be looked into to confirm which part of plot No. 564 was acquired under declaration dated 1.5.1975.

6. Learned counsel for the Board with reference to counter, supplementary counter affidavit filed on behalf of respondent Nos. 2 to 4 submitted that the acquisition having been made as far back in 1975-76 and the lands having been handed over to the Board on 22.7.1977, as would appear from the map dated 7.5.1979 neither the State authorities nor the authorities of the Board are in a position to produce receipt showing service of notice on Sushil Kumar Jaiswal as acquisition being quite bid the authorities have destroyed the relevant records. He further submitted that at the time the lands in question were handed over to the Board, the house of the petitioners did not exist, which was raised thereafter and no sooner the authorities of the Board noticed such construction they initiated proceeding for demolition of the construction. On such submission being made, this Court asked the counsel to produce any record to suggest that any proceeding for demolition of the house in question raised over the aforesaid 7.75 decimals of land of plot No. 564 was initiated. Counsel then fairly conceded that from the record, counter affidavit it does not appear that any proceeding was ever initiated against the petitioners for demolition of the house from part of plot No. 564.

7. In reply to the submission made by the Collector, Patna that the compensation amount has been deposited in the treasury, learned counsel for the petitioners submitted that deposit of compensation amount in the treasury without taking actual physical possession of the lands in question is meaningless as Sushil Kumar Jaiswal and the petitioners have remained in possession of the land/house in question throughout which was sought to be disturbed in the year 1997 when red mark was put by the authorities of the Board on the house whereafter the present petition was filed on 17.9.1997 and stay obtained on 12.10.1998, as such, the possession of the house/land in question having not been taken from Sushil Kumar Jaiswal until his lifetime and thereafter from Rama Devi. The acquisition with respect to 7.75 decimals of land in plot No. 564 would be deemed to have lapsed for failure to serve notice under Section 4 of the Act, take possession and deposit compensation amount in civil court. In this connection,

he referred to the judgment of the Supreme Court in the case of Pune Municipal Corporation and Another v. Harakchand Misirimal Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, and submitted that expression "compensation has not been paid to landowners" occurring in 2013 Act may also apply to the present case as from the valuation register itself it is well established that the compensation payable to Sushil Kumar Jaiswal was deposited in the Collectorate and not in Court.

8. Having heard counsel for the parties and having considered the pleadings made by them, I am satisfied that a proceeding for acquisition of large chunk of land including survey plot No. 564 (part) was initiated and concluded vide declaration dated 1.5.1975, Annexure-A to the counter affidavit filed on behalf of the Board which referred to the map of the area acquired so as to enable the landowner of the lands in question to know as to which part of plot No. 564 and other plots was acquired in part. The map referred to in declaration dated 1.5.1975 has to be drawn prior to issue of declaration dated 1.5.1975 but the map produced before me is dated 7.5.1979 drawn after four years of issue of declaration dated 1.5.1975. The map referred to in declaration dated 1.5.1975 having not been produced before me, it is difficult for me to find out which part of plot No. 564 situate either on its north-eastern boundary as claimed by the Collector or on the southwestern boundary abutting Bhootnath Road as claimed by the petitioners has been acquired. Petitioners having not been served with notice under Section 4 of the Act and remained in possession of 7.75 decimals of land in plot No. 564 situate on its south-western boundary throughout since their purchase, I have no option but to hold that the said 7.75 decimals of land in plot No. 564 situate on its southwestern boundary abutting Bhootnath Road was never acquired for the Board.

9. In view of my discussion above, I allow the writ petition and set aside the acquisition made of 7.75 decimals of land in plot No. 564, as admittedly double storey house of the petitioners has come over the lands in question after the acquisition and there has been no attempt by either the State or the Board to stop such construction. Petitioners have been sufficiently harassed in this matter and in appreciation of such fact, I also direct the Board to pay cost of Rs. 5,000/- to the petitioners.