
(1964) 09 CAL CK 0023

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1211 of 1959

Benarasi Sha

APPELLANT

Vs

Lakshmi Rani Dey Sarkar

RESPONDENT

Date of Decision : 18-09-1964

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 17, 17A

Citation : (1966) 2 ILR (Cal) 662

Hon'ble Judges : P.N. Mookerjee, J

Bench : Single Bench

Advocate : S.C. Mitter, for the Appellant; Chandidas Roy Choudhury, for the Respondent

Final Decision : Allowed

Judgement

P.N. Mookerjee, J.—This is the Plaintiff's appeal arising out of a suit for recovery of possession. The suit was decreed by the learned Munsif, but, on appeal, it was eventually dismissed by the learned Subordinate Judge. Hence this second appeal by the Plaintiff.

2. There was a previous appeal to the lower appellate Court, which succeeded and ended in a remand to the learned trial Judge (Munsif), and thereafter, on appeal, as stated above, from the decree, last passed by the learned trial Judge, the Plaintiff's suit was dismissed, necessitating the present second appeal by the Plaintiff.

3. The disputed property was comprised in C.S. plot No. 9, which had an area of 36 acres. There was, according to the Plaintiff, a partition between the original owners on October 19, 1927, by which his vendor Surendra, one of the original co-sharers, was allotted the eastern half of the above C.S. plot, which comprised the disputed property and which, in turn, was sold to the Plaintiff by Surendra on May 9, 1953. The actual dispute related to the kha schedule property, which comprised the north-eastern corner portion of the above partitioned property,

allotted to the Plaintiff's vendor Surendra and purchased by him (Plaintiff), as aforesaid.

4. The defence was a denial of the Plaintiff's title upon two grounds : that there was no partition, as alleged by the Plaintiff, conferring upon him or his vendor exclusive title to the eastern half of C.S. plot No. 9, comprising the disputed property; and secondly, that, prior to the Plaintiff's purchase, there was a notification for acquisition of, inter alia, the disputed land under the Land Acquisition Act, as a result whereof, according to the defence, subsequent sale to the Plaintiff could not confer upon him any title to the disputed property. The contesting Defendant claims to be a lessee from one of the co-sharers Bangajyoti Banerjee, from whom she alleges to have subsequently purchased the property on Bhadra 11, 1361 B.S.

5. As I have said above, there was previously a decree of the suit by the learned trial Judge, but, on appeal to the lower appellate Court, the matter was remanded, presumably for proof of the Plaintiff's title, particularly with reference to the acquisition aforesaid and also the partition, alleged by the Plaintiff. There was a partition deed, put forward by the Plaintiff for proving the above partition to the lower appellate Court on the previous occasion, which held that the same had not been properly proved before the trial Court on account of some confusion or misunderstanding and gave the Plaintiff an opportunity to prove the same after remand. The learned appellate Judge, on that occasion, also remitted consideration of the effect of the acquisition proceedings on the question of the Plaintiff's title to the learned trial Judge.

6. The learned trial Judge, on the present occasion, came to a finding in favour of the Plaintiff on both the above points and decreed the suit. On appeal, the learned Subordinate Judge has upheld the learned trial Judge's finding, so far as the question of partition is concerned, but, on the point of the effect of the land acquisition proceedings on the Plaintiff's purchase or his title to the disputed property, he has differed from the learned trial Judge and has reached the conclusion that, by reason of the said acquisition, the Plaintiff could not claim any title to the disputed property by his subsequent purchase, as aforesaid. The learned Subordinate Judge, in his judgment, has distinguished for purposes of his above conclusion, the case, cited before him on the point, namely, the case of Neelkanth Mali Vs. Jagannath Singh and State of Rajasthan, , which purported to hold or apparently held the contrary.

7. Before me, the only point, which has been argued and which requires consideration, is as to the effect of the land acquisition proceedings on the Plaintiff's title in the facts of the instant case. It has been found by both the Courts below concurrently that, although there was the necessary notification under the Land Acquisition Act for acquisition of the property in question, the Collector did not take possession of the disputed property and there was some" evidence, oral in nature, of the Land Acquisition Surveyor that the notice of acquisition, so far as this disputed property is concerned, was withdrawn. There

was, however, no other evidence on the point and in the circumstances I do not propose to rely upon that oral evidence for the purpose of holding that there was any such withdrawal. The point, therefore, which will have to be considered in the present appeal, is whether, after notification for purposes of acquisition under the Land Acquisition Act but prior to the taking of possession under the said acquisition, the title to the property, sought to be acquired or put under acquisition, vests in the Government or remains with the original owner. If the answer to this question be in favour of the original owner, the Plaintiff's title to the disputed property in the present case must be found. I may incidentally note here that Mr. Roy Choudhury, arguing on behalf of the Respondents, also raised a contention that, notwithstanding the evidence of the Land Acquisition Surveyor that possession of the disputed property was not taken by the Collector, it may be held in the instant case that the Collector took possession of the disputed property but permitted the Defendants to continue in occupation, presumably under the Government. Of this, however, there is no indication in the proceedings before the trial Court or before the lower appellate Court and the learned Subordinate Judge has actually proceeded upon the footing and that quite correctly, that the Collector did not take possession of the disputed property and affirmed the learned trial Judge's finding to that effect. I would, accordingly, proceed upon the view that, in the instant case, there was undoubtedly the requisite notification under the Land Acquisition Act for acquisition of the disputed property but, in pursuance thereof, possession was not taken by the Collector. Whether from this an inference of withdrawal of the acquisition proceedings, so far as the disputed property is concerned, is permissible, need not be considered for purposes of the present case as, in my view, upon a reading of the relevant sections, Sections 16 and 17 including Section 17A of the Land Acquisition Act, it is perfectly clear that, even if there was notification for acquisition, until possession is taken by the Collector, the owner's title is not disturbed and there is no vesting of title in the Government and this will be so, notwithstanding that there might have been an award under the Land Acquisition Act for the compensation money in the meantime. In my view, this is the inevitable conclusion from a proper reading of the above statutory provisions and I am supported in this view by the decision of this Court in the case of *Nrishinha Charan Nandi Chaudhuri Vs. Nagendra Bala Debee and Another*, and also by the decisions of two other High Courts, viz., *Union Sugar Mills Co. Vs. U.P. Government and Others*, and *State of Bihar Vs. Dr. G.H. Grant and Another*, , not to speak of the decision of the Rajasthan High Court, which was cited before the learned Subordinate Judge, namely, *Neelkanth Mali v. Jagannath Singh Supra* and which, undoubtedly, was sought to be distinguished by the learned Subordinate Judge, but which, in my view, is not distinguishable, so far as the relevant principle or the construction of the relevant statutory provisions is concerned.

8. Mr. Roy Choudhury strongly relied upon a decision of this Court in the case of *Amar Chandra Kundu v. Ram Sundar Saha* (1909) 13 C.W.N. 357, but, clearly,

the said case is distinguishable, as there the Collector took possession of the property and therefore, the present question did not arise in the said case and the said decision cannot help Mr. Roy Choudhury on the point.

9. In the above view, I would allow this appeal, set aside the judgment and Decree, passed by the learned Subordinate Judge and restore those of the learned Munsif.

10. In view of the nature of the questions, involved in this proceeding, I would make no order as to costs, either in this Court or in any of the two Courts below.