
(1944) 09 PAT CK 0010
In the Patna High Court

District Board of Manbhum

APPELLANT

Vs

Bengal Nagpur Railway Co. and Another

RESPONDENT

Date of Decision : 14-09-1944

Acts Referred:

Bihar and Orissa Local Self-Government Act, 1885 — Section 73
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1945 Patna 200

Hon'ble Judges : Manohar Lall, J;Beevor, J

Bench : Full Bench

Judgement

Manohar Lall, J.—This is an appeal by the District Board of Manbhum a defendant, in an action brought by the respondent before us the Bengal Nagpur Company and for demolition and removal of a building erected on the land by defendant 2 a licensee of the District Board. The question for consideration is the respective rights of the parties in the disputed land. The plaintiffs' case was that by an agreement" with the Secretary of State for India in Council dated 9th March 1887 supplemented by the later contracts of the years 1891, 1901,1902,1903,1910,1912 and 1914 the Government made an acquisition under the Land Acquisition Act of 1894 in the year 1902 in order to enable the railway company to carry its railway lines and for establishing a colony at Adra, that in pursuance of para. 60 of the agreement the railway company was allowed to have possession over this acquired land for its use and enjoyment during the continuance of the contract subject to the right of the railway company to relinquish so much of the land to the Secretary of State as may have become unnecessary to be retained possession of by the railway company for any of the purposes of the contract. It was further alleged that Baghunath-pur Kashipur Road a public road belonging to the Government which at the time of the acquisition in 1902 used to pass through the lands after acquisition was handed over to the railway company for their use and occupation a portion of the road along with the road side, lands also fell within the limits of the lands which were acquired and handed over to the company. It is then stated in para. 7 of

the plaint which may be quoted in extenso:

That some time after the aforesaid land acquisitions and construction of the railway lines there the said land together with a portion of the Baghunathpur Kashipur Boad and some other road side lands on the sides of the said portion was allowed to be occupied by the Distriot Board of Manbhum the defendant 1 simply for purposes of maintenance of the road. The cause of action of the suit was that defendant 1 settled a portion of this road side land with Siddhi Prasad Kar defendant 2 in the action by a lease authorising him to construct a building over that land and on the strength of that lease defendant 2 in November 1940 began to dig out the foundation of a building and notwithstanding the repeated warnings on behalf of the plaintiff he persisted in completing the building.

2. It was also asserted that even if defendant 1 has any right in the disputed land he has no right to lease it out to defendant 2 in order to construct a building so as to interfere with the plaintiff's right to access to the road which has been obstructed. Accordingly a suit was instituted for the declaration that defendant 1 has no right to lease the land either permanently or temporarily to defendant 2 for making a pucca construction thereon and for an order on the defendant to demolish and remove that structure. The defendant filed separate written statements but they are substantially to the same effect. They challenged the correctness of the allegation that the lands in suit or the adjoining portion of the road were acquired for the railway by the Government but the Courts below have concurrently found that the land in dispute was so acquired and this finding has not been challenged on behalf of the appellant and is conclusive in second appeal. The allegations in para. 7 of the plaint were not admitted and it was alleged that the Kashipur Road and the lands on either side of it and adjoining the said road belonged to or are vested in this defendant and that the same had been under the control and administration of this defendant under the law. The right of the plaintiff to the adjoining lands was denied and it was asserted that the lands actually in occupation of the railway were so situated that the plaintiff is not entitled to any right of approach and no such right has been or can be infringed. It was also denied that the plaintiff was an occupier of any land adjoining the roadway.

3. One of the issues in the case was that as the plaintiff was not the owner of the land according to their own allegation in the plaint but was merely allowed the use and occupation of the land he had no locus standi to bring this suit. The Courts below overruled this contention of the defendants and held that although the lands were acquired by the Government under the Land Acquisition Act they were made over to the plaintiff who thus have a right to maintain the action. The most important issue in the case was issue 9. "Whether defendant 1 has got any right to settle the disputed land with defendant 2." The Courts below have held that the District Board has no proprietary right over the disputed road or roadside land and that by the operation of Section 73, Bihar and Orissa Local Self-Government Act, defendant 1 had merely control and administration of the

disputed land. It followed from this finding of the Courts below that defendant 1 had no right whatsoever to grant any lease to defendant 2 for erecting a house as this would be for a purpose which was wholly inconsistent with the object with which defendant 1 was in control of this land, viz., for the purposes of a road. The Courts below also having found that the disputed land was part and parcel of the public road and the railway lands of the plaintiff being just to the adjacent west of the disputed land the plaintiff had a right of access to the highway at all points touching the boundary of those lands, and therefore, defendant 2 by constructing a pucca building on the disputed land has interfered with the right of access. They also hold that the construction of a compound wall by the plaintiff or their contractors between the disputed land and the other lands of the railway just to the west of the disputed land does not debar the plaintiff from claiming the right of access to the public road through the disputed land. On these findings the suit was decreed by the trial Court and that decision was affirmed in appeal. Hence the second appeal to this Court.

4. Mr. P. R. Das, who appears for the appellant, raises a number of serious questions for our decision. In the first place his argument is that as the lands in suit upon which the disputed construction has been raised belongs, on the very case of the plaintiff in the plaint to the Secretary of State, the plaintiff has no right to maintain the suit. In the alternative he argues that it must be held that the lands vested in or were given under the control of the District Board, and therefore, defendant 1, was within his rights under the appropriate Act to make settlement with defendant 2 in the ordinary way. In my opinion it has been conclusively established that the land upon which the public road runs and the roadside lands were acquired by the Secretary of State in appropriate proceedings under the Land Acquisition Act. The roadside lands upon which the disputed construction stands are parts of such acquired lands. The whole of this land was made over to the plaintiff railway for their use and occupation. "What then is the position of the plaintiff as the result of this arrangement between him and the Secretary of State ? Was the grant a mere license or a lease of property ? Now the Secretary of State made over to the railway company this land for a price paid: see para. 36 of the agreement. Under Clause 60, the land was declared to be the property of the Secretary of State for India in Council subject to the user and enjoyment thereof by the company during the term of the contract. The company was expressly allowed to have possession during that time. The contract was to continue till 31st December 1913, or till the 31st day of December of any succeeding tenth year (cl. 89). All the requirements of a lease u/s 105, T. P. Act, are present: see the case in Secy. of State Vs. Bhupalchandra Ray Chaudhuri, . I would hold that the plaintiff is a lessee.

5. Mr. Das accepted the position that in this case the land was under the control and administration of the District Board within the meaning of Section 73, Self-Government Act and that Section 75 has no application which would have applied only if the land vested in the District Board.. He, therefore, argued, in the next place that as the land was under the control and administration of defendant 1,

they had every right to settle it with, defendant 2. Mr. B. C. De on the other hand: contended that the powers of the District; Board were limited to the use of the roadside land for purposes ancillary to the maintenance of the main road and that they had no right whatsoever to divert it to a different purpose, and relied upon the case of this Court reported in Dwarka Prasad v. Patna City Municipality AIR 1938 Pat. 423 which was affirmed in Letters Patent appeal in Patna City Municipality v. Dwarka Prasad AIR 1939 Pat. 683. There is a useful discussion by their Lordships. pi the Judicial Committee in AIR 1937 299 (Privy Council) . A similar question arose there in connexion with the municipality which was governed by the U. P. Municipalities Act (2 of 1916). , In that case the plaintiff who was the owner of a certain revenue-free land, a shop standing thereon, as well as the street in front thereof complained that, the defendant with the sanction of the municipality had erected a portico along the front of, their premises without any permission from the plaintiff and thereby committed trespass and otherwise caused injury, to the plaintiff. His contention was that as an effect of Section 116, U. P. Municipal Act, the Municipal Board had not full title to the solum of the street but to a special property therein sufficient to enable the Board to control it as a street, and that this right was not inconsistent with, and did not oust the right of the plaintiff as the, owner of the land to object to the erection of a building thereon without his permission. The defendants on the other hand contended that as a result of this section the Municipal Board became the owner of the surface of the street and of so much above and below as was necessary for the discharge of their duties and the exercise of their powers under the Act. After referring to some English cases their Lordships decided that although by Section 116 ay. properties situated within the municipality vested in it in the restricted sense used by Lord Morris in Municipal. Council of Sydney v. Young (1898) 1898 A. C. 457 that is to say, the vesting of street or public ways vests no property in the municipal authority beyond the surface of the street and such portion as may be absolutely necessarily incidental to the repairing and proper management of the street but that it does not vest the soil or the land in them as the owners. Attention was also drawn to the case in (1903) 1 Ch. 4376 where Collins M. R. observed that

the word "vest" means that the local authority do actually become the owners of the street to this extent: they become the owners of so much of the air above and of the soil below as is necessary to the ordinary user of the street as a street and of no more.

6. It was decided that apart from the right of the plaintiff to complain of the disputed construction as an obstruction or nuisance or to complain that sanction was not duly granted

they consider that it would put too narrow a meaning upon the words "shall vest in and belong to the Board if it were to be held that, the Municipal Board was not competent of itself in the due course and exercise of its powers to authorise such an erection as is here complained of. To that extent the Municipal Board has

property in the street. It is part of the purpose of Section 116 that the Board should not lack the ownership necessary to support an effective control of such matters and that the general property of the original land owner in the solum of the street should be modified and abridged in that behalf. Without in any way holding that Section 116 operates, to convey title in the full and proper sense (of the observations of Romer L. J, in *Finchley Electric Light Co. v. Finchley Urban Council* (1903) 1 Ch. 437 their Lordships think it at least certain that the original owner of the soil cannot maintain trespass for an erection of the character now in question and they do not think that he can otherwise complain of it as an infringement of his rights as owner

the words are italicised by me. They expressed no opinion upon the question whether a permanent structure with pillars resting upon the highway is or is not an obstruction or is an inappreciable obstruction to the highway or is such as could be complained of by the Advocate-General or by others with his consent (Section 91, Civil P. C.) on behalf of the public or by a member of the public showing damage special to himself.

7. Mr. B. C. De submits that this case would have application if the land had vested in the District Board within the meaning of Section 75 but here Section 73 applies and the land is merely held under the control and administration of the District Board for the purpose of maintaining it-the erection of the building by the lessee from the District Board cannot be said to be for the purpose of maintaining the road. I agree with this contention. Here the land belongs to the plaintiff and is merely under the control of the District Board who holds it for the purpose of a road. It does not vest in them unlike the Privy Council case. They cannot divert the land to any other use and allow a lessee from them to put up a permanent building thereon. Moreover, the construction here is wholly different in character to what was complained of in the *United Provinces* case. In this view of the matter the question as to whether the plaintiff has proved any special damage to himself. and therefore cannot, maintain the suit without the sanction of the Advocate-General does not arise. Mr. Das also argued ingeniously that upon a true construction of para. 7 of the plaint it must be held that the Government had allowed the District Board to occupy the land. He-says that this land was not required for the use of the railway as is proved by the fact that they had fenced off the land actually required by them and therefore it must be presumed that under Clause (60) of the agreement they relinquished it to the Government and upon the pleadings in para. 7 the Government has made it over to the District Board who occupies it as full owner for the time being. He therefore suggests that in this particular case it is the Government alone Who can maintain the action.

8. The argument in this form has never been raised in the Courts below and the suit has proceeded all along, upon the pleadings and: the evidence adduced by the parties that if the land was acquired by the Government then it was made over to the plaintiff who allowed the defendant to occupy it for the purpose of

maintaining a road-this was the case of the plaintiff or that the land was never acquired by the Government and it has all along been in occupation of the District Board-this ,was the case of the defendant. In reply to para. 7 of the plaint the District Board said that they did not admit of the truth of the allegations therein but stated that this road and the lands on either side of it and adjoining the road belonged to or were vested in this defendant and the same has been in the control and administration of the defendant and in para. 5 they distinctly stated that they did not admit that the land in suit or the adjoining portion was ever acquired by the railway. On an interpretation therefore of the pleadings and the manner in which the case was presented to the trial Court, I must overrule this contention of Mr. Das.

9. It was then argued by Mr. Das that only the owner of a land can claim a right of access to the highway and not the occupier and referred us to some English cases. Mr. De on the other hand argued that as the plaintiff or their servants and contractors occupy the land immediately adjoining the disputed land they have a right to complain if their access to the road is interrupted and relied upon two cases of this Court in Pahlad Maharaj and Others Vs. Gauri Dutt Marwari and Another, followed in Dasrath Mahto v. Narain Mahto A. I. R. 1941 Pat. 249. In my opinion after we have decided that the District Board had no right to give sanction to defendant 2 to put a permanent structure thereon this question is of merely academic interest but as arguments have been advanced before us it is desirable that I should give my decision on this question also. Mr. Das referred to Smith's leading cases, *Dovaston v. Payne* 2 Sm. L. C.166 where it is stated that an owner of a land adjoining the highway is entitled to access to the highway at all points where the land adjoins the highway whether or not the soil of the highway be his. Reference was also made to *Vestry of St. Mary Newington v. Jacobs* (1872) 7 Q.B. 47 and *Marshall v. Blaekpool Corporation* (1935) 1935 A. C. 16

10. In my opinion, as a Division Bench, we are bound to follow the decisions in the Division Bench cases of this Court relied upon by Mr. De namely *Dwarka Prasad v. Patna City Municipality* AIR 1938 Pat. 423 and *Patna City Municipality v. Dwarka Prasad* AIR 1939 Pat. 683 and also *Pahlad Maharaj and Others Vs. Gauri Dutt Marwari and Another*, and *Dasrath Mahto v. Narain Mahto* A. I. R. 1941 Pat. 249 referred to above. They apply accurately to the facts of this case. The plaintiff and his servants are the occupiers of the land immediately to the west of the disputed land and on the findings of fact their right of access to the highway has been interrupted by this obstruction. The plaintiff has proved a special damage to himself and can maintain the action without obtaining the sanction of the Advocate-General. Some argument was advanced based upon the physical features of the locality. The appellate Court observed at p. 58 that to the west of the road is the disputed land:

To the contiguous west thereof was a Railway fencing recently replaced by a pucca wall. To the immediate west of it is an open space belonging to the Railway

colony now in occupation of one Kalyanji Kersandas a Railway contractor and to the further west is the house of the said contractor in which there are windows opening on the east towards the disputed house.... Further south of the land in suit there was gate leading to the road which could be utilised by the plaintiff for the purpose of having access thereto.

11. Even so the plaintiff in my opinion has a right of access to the road to every part of the roadside land which abuts on to his land even though he may have fenced it off or raised a wall for" the convenience and the enjoyment of his contractors or servants and even if he had opened a gateway towards the south. Lastly it was faintly suggested that mandatory injunction ought not to have been issued in this case without a finding that damages were not adequate to compensate the plaintiff. Attention was drawn among other cases to *Rewa v. Vrijvalabh* (04) 6 Bom. L. R. 41, *Khaji Syyad Hussain Saheb v. Narasimhappa* (12) 16 I. C. 962 (Mad.). The Courts below have considered this question and found that in a case like the present damages in money cannot give adequate relief and referred to. the case of this Court in 22 P. L. T. 1118 . In the circumstances I am unable to take a different view. The result is that all the contentions raised on behalf of the appellant fail. The suit has been rightly decreed and I would dismiss this appeal with costs. The defendants must remove the "disputed structure within three months from the date of the decree of this Court failing which the plaintiff will get it removed through Court at the cost of the defendants.

Beevor, J.

12. I entirely agree with the reasons and conclusions of my learned brother but it seems to me that there is a further ground on which the appeal should fail. The acquisition of the land in question by Government on behalf of the Railway was subsequent to the date on which the District Board acquired any rights of control and administration u/s 73, Local Self-Government Act, and no such rights continued after the acquisition as was conceded by Mr. P. R. Das. The District Board having in their written statement denied that the land in suit was covered by the land acquisition proceedings cannot reasonably contend when such an acquisition has been proved that there was a subsequent relinquishment by the Railway to Government and any grant thereafter to the District Board. Moreover we are not concerned with any rights which may have accrued to the public or to the District Board on the road itself after the land acquisition proceedings but only with some roadside lands. The Railway in their plaint certainly said that these roadside lands were allowed to be occupied by the District Board Manbhum, simply for the purpose of maintenance of the road. I do not consider that this is inconsistent with those lands being still required for the purposes of the Railway. The existence and maintenance of the road are almost certainly to the benefit of the Railway and if the Railway allowed the District Board to occupy the roadside lands for the purpose of maintaining the road, I think the lands may still be required and utilised for the purposes of the Railway. Although para. 7 of

the plaint uses the words "occupied by the District Board" the subsequent words "simply for the³ purpose of maintenance of the road show that the Railway in their plaint did not mean that the District Board had been granted any greater rights than those of a licensee for a limited purpose. I therefore consider that subject to such a limited license the possession of the road side lands at least remained with the Railway and the Railway therefore had the right to bring the present suit.