
(2016) 09 JH CK 0048
In the Jharkhand High Court
Case No : L.P.A. No. 664 of 2015

Navin Kumar Sinha

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Citation : (2017) AIR(Jharkhand) 92 : (2017) 2 AIRJharR 321

Hon'ble Judges : Mr. D.N. Patel and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : M/s. K.K. Singh & Pankaj Kumar, Advocates, for the Appellant; J.C. to SC (L&C), for the Respondent

Final Decision : Disposed Off

Judgement

D.N. Patel, J. (Oral)—Counsel for the appellant has argued out the case at length and submitted that:-

? Plot in question is bearing No. 670, Khata No. 29, Thana No. 45, situated at village-Itkhor, District-Chatra.

? Plot in question is ad-measuring 24 decimals.

? Plot in question is originally purchased by the grandfather of this appellant (original petitioner)-Badri Prasad and Prabhu Dayal (who is brother of Badri Prasad). Photocopy of the sale deed is at Annexure-1 to the memo of appeal.

? The averments have been made in the memo of the writ petition being W.P.(C) No. 310 of 2014 that the appellant (original petitioner) is the owner of the property being a grandson of Badri Prasad. Never any counter-affidavit has been filed by the respondents-State to the effect that this appellant (original petitioner) was not the owner of the property in question.

? Thus never any dispute was raised by the respondents-State that this appellant (original petitioner) was not the owner of the property in question, which was acquired for police station.

? Confused arguments were canvassed in the counter-affidavit, which was filed by the Circle Officer of the State of Jharkhand, which was noted in the judgment delivered by the learned Single Judge while dismissing the writ petition preferred by this appellant, that as this appellant (original petitioner) was not in possession of the property in question and hence, he is not entitled for compensation. This is a wrong notion in the mind of the State. There is no need to be in possession of the property in question, which is later on acquired by the State, for getting compensation. Ownership is sufficient.

? There are factual as well as legal errors in the judgment passed by the learned Single Judge, while dismissing the writ petition being W.P.(C) No. 310 of 2014 vide order dated 10th September, 2015, especially to the effect that

(a) No dispute has been raised in the counter-affidavit by the State about the ownership of the property in question.

(b) As this appellant (original petitioner) was not in possession of the land acquired, it cannot be said that he is not entitled for compensation.

? Thus there is factual error as well as error on the law in the judgment delivered by the learned Single Judge while dismissing the writ petition preferred by this appellant.

? There is one more absurdity in the argument canvassed by the counsel for the State that upon the acquired land, there is a police station. This fact has been stated in paragraph No.5 of the judgment. The date of purchase of the property in question is 29th December, 1954. If the police station comes into existence thereafter, it appears that the land in question has been acquired without any proper procedure being followed and the police station has been constructed and hence, compensation ought to have been paid by the State.

2. Counsel for the respondents has submitted that-

? The property in question upon which police station was already in existence and hence this appellant cannot get compensation.

? The police station was already in existence upon the Plot No. 670, hence, the same was not required to be acquired.

? Appellant is not in possession of the plot in question, hence, he is not entitled for compensation.

? This appellant (original petitioner) is not the owner of the property in question.

Reasons

3. Having heard the counsel for both the sides and looking to the facts and circumstances of the case, we hereby quash and set aside the judgment and order dated 10th September, 2015 in W.P.(C) No. 310 of 2014 delivered by the learned Single Judge mainly for the following facts and reasons:

(i) This appellant is an original petitioner, who is claiming compensation for Plot No. 670, Khata No. 29, Thana No. 45, situated at village-Itkhor, District-Chatra.

(ii) Property in question was purchased by the grandfather of this appellant (original petitioner) and his brother, who are Badri Prasad and Prabhu Dayal. Sale deed is at Annexure-1, which is dated 29th December, 1954, Property was purchased from one Shri Ram Kishun Tiwary. In fact, sale deed is for several plots, including for the Plot No. 670.

(iii) Never any dispute has been raised by the respondents-State about the genuineness, correctness and the validity of the registered sale deed dated 29th December, 1954, which was also annexed as Annexure-1 to the writ petition preferred by this appellant.

(iv) There are several other documents like payment of revenue by Badri Prasad and his brother Prabhu Dayal, which are annexed with this L.P.A.

(v) It is alleged that upon Plot No. 670 later on police station has been constructed, without giving any compensation to this appellant (original petitioner). This aspect of the matter has not been properly appreciated by the learned Single Judge and hence, judgment and hence order passed by the learned Single Judge deserves to be quashed and set aside.

(vi) It has been observed by the learned Single Judge that ownership of this appellant (original petitioner) is in dispute. This is a factual error in the judgment. In the counter-affidavit, filed by the respondents-State, in W.P.(C) No. 310 of 2014, never any plea has been raised by the respondents-State that Badri Prasad and his brother Prabhu Dayal were not the owner of the property in question. State now, in L.P.A could not deny the ownership of this appellant nor State could raise the plea about the correctness, genuineness and the validity of the sale deed. Thus, in absence of such plea by the State of Jharkhand, it cannot be said that ownership of this appellant (original petitioner) in Plot No. 670 was in dispute. No body has raised such dispute, much less the State of Jharkhand in the writ petition. This dispute has also not been raised in the memo of this L.P.A.

(vii) It has also been observed by the learned Single Judge that as this appellant (original petitioner) was not in possession of the property in question, he is not entitled for compensation. This is an error in law. For getting compensation for the land acquired, there is no such requirement that owner must be in possession of the land in question. It is a wrong notion in the mind of the State of Jharkhand.

(viii) Looking to para-10 of the counter-affidavit, filed by the State of Jharkhand, in the writ petition, it ought to be kept in mind that whenever affidavit is to be filed in the High Court, it ought to have been filed by the Secretary or the Deputy Secretary or by such other high-ranking administrative officer. In the facts of the present case, counter-affidavit has been filed by the Circle Officer on behalf of the State. In para-10, he has mentioned that appellant (original petitioner) is not

in possession of the land, hence, he is not entitled for compensation. This is an absurd argument. The owner of the property, which is under acquisition, is always entitled for compensation, even though, he is not in possession of the property in question.

(ix) It has also been observed by the learned Single Judge in para-6 that upon an area ad-measuring 0.24 acres of land of Plot No. 670, the police station is already in existence. Meaning thereby, petitioner is entitled for compensation, especially when no plea has been raised by the State of Jharkhand that prior to 29th December, 1954, the date on which the property was purchased by Badri Prasad and Prabhu Dayal, the police station was already in existence. If the property is purchased by the citizens and later on, police station was constructed upon their land, compensation ought to have been paid by the State. These aspects of the matter have not been properly appreciated by the learned Single Judge while dismissing the writ petition preferred by this appellant.

4. As a cumulative effect of the aforesaid facts and reasons, we, hereby, quash and set aside the judgment and order dated 10th September, 2015, in W.P.(C) No. 310 of 2014, delivered by the learned Single Judge. We, hereby, direct the respondent-State to make payment of Rs.25,000/- (Rupees Twenty Five Thousand) tentatively to this appellant by Account Payee Cheque and this amount may be accepted by this appellant upon giving undertaking to the respondents-State to the effect that after final calculation is arrived at by the respondents-State, if any amount is to be returned, then immediately the said amount will be returned by this appellant. Calculation will be made later on by the State for compensation and to be paid to this appellant. Aforesaid amount will be paid by the State within the period of four weeks from the date on which copy of this judgment is received by the State of judgment upon the undertaking to be filed by the appellant before the respondents-authority that if any amount is to be returned by the appellant, it will be refunded after final calculation of the compensation to the respondents-authority within further period of sixteen weeks from the date on which copy of this judgment is received by the State.

5. This L.P.A is disposed of.