

(1956) 09 RAJ CK 0010
In the Rajasthan High Court
Case No : Second Appeal No. 235 of 1954

Neelkanth Mali

APPELLANT

Vs

Jagannath Singh and State of Rajasthan

RESPONDENT

Date of Decision : 24-09-1956

Acts Referred:

Constitution of India, 1950 — Article 31
Land Acquisition Act, 1894 — Section 16, 17, 6

Citation : AIR 1957 Raj 59 : (1957) RLW 20

Hon'ble Judges : K.N. Wanchoo, C.J;D.S. Dave, J

Bench : Division Bench

Advocate : U.M. Trivedi, for the Appellant; L.N. Chhangani, Government Advocate and S.S. Bapna and Chandmal for Respondent (No. 1), for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an appeal by Neelkanth Mali who was plaintiff in a suit brought by him against Mehta Jagannath Singh and the State of Rajasthan. The suit was dismissed by the trial court. There was an appeal by the plaintiff which was also dismissed. Hence this second appeal.

2. The plaintiff's suit was for a declaration of his title to a plot of land measuring 7 Biswas was on which a house and a well stand in the city of Udaipur. He also asked for a permanent injunction restraining the defendants from dispossessing him from the property in dispute. The plaintiff claimed to be in possession of the property in dispute for a long time, and said that the defendants were trying to dispossess him on the basis of an order passed in St. 1999 for the acquisition of the land for construction of the Fateh High School building.

His case further was that the land was never acquired for the Fateh High School, and remained in his possession all along. But in July 1947, the then Ruler of Mewar ordered the grant of Bapi of the land in favour of Mehta Jagannath Singh.

Thereafter the plaintiff was ordered to hand over possession to Mehta Jaganath Singh. The plaintiff, however, did not do so, and gave notice to the State u/s 80 of the Civil P. C., and thereafter filed the present suit.

3. The defendants did not dispute the plaintiff's long and continuous possession of the property; nor was it disputed that the plaintiff was in possession of the property on the date on which he brought the suit. Their case was that the plaintiff was only a Shikmi tenant of the property.

The property was acquired by the State, and thereafter it was given in Bani to Mehta Jagannath Singh, and consequently the plaintiff's suit must fail.

4. The trial court dismissed the suit for the first time in May, 1930. There was an appeal to the District Judge, which was allowed, and the suit was remanded with the direction that findings should be recorded in all undecided issues. Thereafter, the trial court gave its findings on all the issues in plaintiff's favour, but dismissed the suit in December 1932, on the ground that notice u/s 80 was not in accordance with law.

The plaintiff then went in appeal, and the suit was again remanded for a finding whether the notice given u/s 80 was in accordance with law, apparently because on the previous occasion no such issue had been framed.

The trial court again gave its finding on the question of notice against the plaintiff. In appeal, however, the District Judge held that the notice was in accordance with law. Besides this, two points were urged in the appellate court viz., (3) whether the plaintiff was a Mustakil Shikmi as held by the trial court, and (2) whether the plaintiff could not be deprived of the property without due process of law after coming into force of the constitution of Mewar in 1947.

So far as the first question was concerned, the District Judge held that the appellant was declared a Shikmi tenant long before the constitution of Mewar came into force, and that order was passed by His Highness the Maharana as the ruler of Mewar, and could not be questioned.

The District Judge thus disagreed with the finding of the trial court that the plaintiff was a Mustakil Shikmi, and held him only to be a Shikmi. On the other point, the District Judge held that the order for acquisition was passed in this case in November, 1943, and that the later proceedings were only in execution of that order, and therefore Article 13 of the Constitution of Mewar, which provided that no person would be deprived of his property without due process of law, would not help the plaintiff.

5. The main question that has been canvassed before us is whether the property of the plaintiff was ever acquired by the former State of Mewar, and if so when. The case of the plaintiff is that his property was never acquired, and therefore whether he is Shikmi or Mustakil Shikmi, he is entitled to a permanent injunction restraining the defendants from dispossessing him.

We therefore propose to address ourselves only to this question relating to the acquisition of the property in dispute by the former State of Mewar.

6. It is not in dispute now before us that the land, of which the plaintiff is the Shikmi, and on which his house and well stand, was ordered to be acquired by an order dated Asoj Sudi 13th St. 1999. This order was passed on a report dated 21-10-1942, for acquiring 59 bighas & 7 Biswas of land including the plaintiff's 7 Biswas for the High School building. The report was submitted to His Highness, and the order of His Highness is as follows-

"Hasb report Haza Karrawai Karayi Jave Tamil Hasb Sirashta Hove."

7. It is contended on behalf of the defendants that this order of His Highness passed in 1942 amounted to a complete acquisition of the land measuring 59 bighas and 7 Biswas and including 7 Biswas of land of the plaintiff. The first question, therefore, that we have to see is whether this order amounts to acquisition of the land by the State, or whether anything further was required before it could be said that the land had vested in the State.

There was no law of land acquisition in Mewar at that time, and acquisition used to be done apparently according to the practice prevalent in the State. But whatever may be the practice prevalent in the State, and it has not been proved before us that the practice was that as soon as an order like the one which we have quoted above was passed acquisition was complete, we have to see what would in justice be the time when it can be said that the land has vested in the State on acquisition.

In this connection the provisions of the Land Acquisition Act of 1894 will be helpful. That Act, of course, did not apply to Mewar; but the principles enshrined in it are, in our opinion, principles of justice, and should apply to a case of acquisition everywhere.

Whenever the State wants to acquire land for a public purpose and it may be noted that acquisition can only be for a public purpose and not for providing land for private individuals, a declaration is made that such and such land is required for a public purpose, and thereafter comes the procedure for acquiring the land.

Now we have no doubt that the order of His Highness the Maharana, dated Asoj Sudi 13th St, 1999, was merely a declaration to the effect that 59 bighas and 7 Biswas of land was required for a public purpose namely for the High School building, and necessary action should be taken for acquiring it.

The order, therefore, which we have set out above, does not amount to anything more than what would be a declaration u/s 6 of the Land Acquisition Act, of 1894. Thereafter, various actions are taken by various authorities for the purpose of acquisition. The Land Acquisition Act also lays down when the land can be said to vest in Government.

Under Section 16 when the Collector has made an award, he may take

possession of the land which shall thereupon vest absolutely in the Crown free from all encumbrances. u/s 17, in case of urgency, the Collector may take possession of certain kinds of lands even before the award is made after giving certain notice. The land then vests absolutely in the Crown free from all encumbrances.

It is clear from these provisions that after the declaration of intention to acquire land, it vests in the State only when possession is taken either before making the award or after making the award. It is only when possession is taken after the declaration of intention to acquire that the vesting takes place.

Without possession, a mere declaration of intention to acquire never vests the property in the State. This, in our opinion, is a principle which should be applied in every case of acquisition whether there is a law of acquisition in a particular area or not.

8. In this case, all that we have got is the declaration of the Ruler's intention made on Asoj Sudi 13th St. 1999 to the effect that 59 bighas and 7 Biswas including the land in dispute should be acquired for the High School. But it is not in dispute that the land in dispute was never taken possession of by the State authorities till the time the plaintiff brought his suit.

Therefore, it cannot be said that the land vested in the former State of Mewar till the time the plaintiff brought his suit. We also find from the file, in which the order of Asoj Sudi 13th St. 1999 appears and parties have agreed before us that we should look into that file, that an order was passed later on the 5-12-1942 by the Minister that possession might be taken only of such part of the 59 bighas and 7 biswas which would be actually required for the building and that the present owners might be allowed to keep possession of the rest of the land.

Thereafter, nothing seems to have been done to take possession of the land which was left with the owners. The conclusion, therefore, is that though the declaration was to acquire 59 bighas and 7 biswas of land, only a part of it was actually acquired, and taken possession of & the remainder was never taken possession of, and therefore never vested in the State.

9. The State therefore could not give a Bapi Patta of land which never vested in it to Mchta Jag-annath Singh, and he has no right to oust the plaintiff from possession of the land and the house and well standing thereon. Nor has the State any right to oust the plaintiff on the ground that the property vested in the State for the property never actually vested in the State.

There was only a declaration of intention to acquire, but acquisition never took place, and the property in dispute never vested in the State, for the State never took possession of it till the date the plaintiff brought his suit.

10. Our attention was drawn to Ex. D7 and Ex. D8 in this connection. Ex. D7 deals with some other land intended to be acquired for Vidyapith. It also says that Mantri Shiresht Rao Bahadur Mehta Jag-annath Singh, who is defendant No.

1 in the suit, has been applying for a plot of land for constructing a house for his sons, and recommends that two plots may be given to him, and this order was sanctioned by His Highness on the 18-2-1947.

But there is nothing to show that Ex. D7 related to this particular plot of land which is in dispute in this suit.

11. Then we come to Ex, D 8, This was a report in September, 1947, in continuation of the earlier report which His Highness had sanctioned on the 18-2-1847. It was in this report that it was, for the first time, pointed out that the land which was intended to be given to Mehta Jagannath Singh by the order of the 18-2-1947, included plot No. 2352 which was in the possession of Neelkanth (namely the plot in dispute).

This plot contained a house of Neeikanth and as he was a Shikmi cultivator he was not entitled to any compensation except the value of the house. It was proposed that he might be paid Rs. 1,413/6/3 cost of the house, and that as this sum had been deposited by Mehta Jagannath Singh, sanction was solicited for giving Neeikanth the sum of Rs. 1,413/0/3, and handing over the house to Mehta Jagannath Singh, It is clear therefore that up to September, 1947, Neeikanth was in possession.

It is also clear that the proceedings relating to acquisition of land for Fateh High School had finished long ago, and Neeikanth's possession was not disturbed in that connection. It cannot, therefore, be said that the land had vested in the State because of the order passed on Asoj Sudi 13th St. 1999 (October, 1942). This report Ex. D-8 was sanctioned by His Highness the Maharana on the 27-9-1947, and is the sheet anchor of Mehta Jagannath Singh's defence.

There is no doubt that in this report there was a specific sanction by His Highness the Maharana for taking possession of the disputed property on payment of Rs. 1,413/6/3 to Neeikanth, and handing it over to Mehta Jagannath Singh. But it is equally clear that up to 27-9-1947, the property in dispute had not vested in the State, and therefore normally the State would have no right by means of such an order to hand over the property of one person to another.

It has, however, been urged on behalf of the respondents that the order of the 27-9-1947, was passed by His Highness the Maharana who was the sovereign ruler of Mewar, and therefore that order could not be questioned in a court of law.

There is no doubt that if an order is passed by a sovereign ruler, it cannot be questioned in a civil court; but what the plaintiff contends before us is that by the time this order of the 27-9-1947, was passed the Ruler of Mewar had given a constitution to his subjects and he could not therefore do any-thing against the constitution. Article XIII (1) of that constitution provides that no person shall be deprived of his property without due process of law.

The plaintiff contends that after this provision in the constitution, it was not open

even to the Ruler on the report of his officers to deprive him of his property by a mere fiat. He could only be deprived in September, 1947, of whatever rights he had in the land and the house and well standing on it according to due process of law, and that the fiat of the Ruler could not amount to due process of law.

We are of opinion that this contention is correct so far as the constitutional position stood on the 27-9-1947. There was no reservation in the Constitution of Mewar of any overriding power in the Ruler to do anything against the provisions of the constitution. It is not in dispute that the Constitution was in force on the 23-9-1947, and therefore the Ruler could not by mere executive order take away the rights of the appellant whatever they were in the property in dispute.

12. It is not necessary for our purposes to define the contents of the words "due process of law". It is enough to say that whatever may be the minimum contents of those words, they certainly do not mean depriving a person of his property by a mere fiat of even the Ruler or the State. The learned District Judge got round this difficulty by saying that the order of the 27-11-1947, was merely the consequence of the earlier order by which the acquisition of the property was ordered.

We are of opinion that this view of the learned District Judge is incorrect. The earlier order of October, 1942, to which we have already referred, did not vest the property in the State. As we have already pointed out, it was merely a declaration of the intention to acquire 59 bighas and 7 biswas of land and that only part of that intention was carried out with respect to property which was taken in possession, and thus vested in the State.

The property in dispute was not taken in possession of by the State in pursuance of the order of October, 1942, up to the date of the suit, and therefore never vested in the State. We have already pointed out that the file on the subject shows that after some time only some of the property was taken in possession, and the rest was allowed to remain with those with whom it was, and therefore it never vested in the State.

The property in dispute was among the property which was allowed to remain with those who had it, and thus never vested in the State. The order, therefore, of the 27-9-1947, cannot be called a sequence of the order of October, 1942.

At the best, it can only be called a new order to the effect that property should be acquired on payment of a certain sum of money and given to Mehta Jagannath Singh. But by that date the ruler of Mewar had not the absolute power he enjoyed formerly, and was bound by the constitution of Mewar which he had himself conferred on his subjects.

Under that constitution, the rights whatever they were of the plaintiff over the property in dispute could not be taken away without due process of law, and mere executive order even of the Ruler could not, in our opinion, amount to due process of law.

In these circumstances, we are of opinion that the plaintiff never lost whatever rights he had in the property. The property never vested in the State, and the State could not sell it or give it in Bapi Patta to Mehta Jagannath Singh.

13. The next question is what relief we should grant to the plaintiff. The plaintiff wants a declaration to the effect that the property in dispute belongs to him, and an injunction against the defendants. So far as the house and well are concerned, they certainly belong to the plaintiff.

So far as the land is concerned, we have not thought it necessary to decide what the exact rights of the plaintiff in it are, and whether he is a Shikmi or Mustakil Shikmi or something else. That we feel is a matter which can best be decided by a revenue court. But so far as the injunction is concerned, we are of opinion that the plaintiff is certainly entitled to an order from us that the defendants be prohibited from interfering in his possession over the property in dispute till they can establish their right in law to do so.

14. We, therefore allow the appeal, set aside the judgments and decrees of the courts below, and decree the plaintiff's suit to this extent that it will be declared that the plaintiff is at least a Shikmi of the land in dispute, and owner of the house and well standing on it, and the defendants are prohibited from interfering in His possession of the property in dispute unless they can establish their right to do so by some thing which hies place after the date of our decree. AS the plaintiff has been dispossessed during the pendency of this litigation, he will be put back in pos session so that the status quo before the suit be restored. The plaintiff will get his costs from Mehta Jagannath Singh. The State will bear its own costs.