

(2008) 02 PAT CK 0150
In the Patna High Court
Case No : FA No. 13 of 2005

NTPC, Kahalgaon

APPELLANT

Vs

Ramautar Sah and Another

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2008) 2 PLJR 567

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Hussain, J.—In view of order dated 7.2.2008 passed by Hon"ble Single Judge in F.A. No. 13 of 2005 as well as order dated 26.9.2007 passed by another Hon"ble Judge in Civil Revision No. 1193 of 2007, the instant I.A. No. 3042 of 2005 filed by the appellant in the First Appeal is listed before this Court "For Orders (On Petition)" alongwith Civil Revision No. 1193 of 2007. Heard learned counsel for the appellant and learned counsel for the respondents.

2. I.A. No. 304 of 2005 has been filed on behalf of the sole appellant for stay of further proceeding of Land Acquisition Case No. 04 of 2004 pending in the Court of Land Acquisition Judge, Bhagalpur during the pendency of First Appeal No. 13 of 2005.

3. The aforesaid First Appeal No. 13 of 2005 has been filed by the sole appellant, namely, N.T.P.C, Kahalgaon, Bhagalpur through its General Manager who was Opposite Party in the court below challenging judgment and award dated 27.8.2004 by which the Land Acquisition Judge, Bhagalpur allowed Land Acquisition Reference Case No. 107 of 1992 in part and it was held that the claimant (respondent No. 1) shall be entitled to compensation of his acquired land at the rate of Rs. 2,000/- (rupees two thousand) per decimal only. He was further held to be entitled to additional compensation at the rate of 12 per cent

per annum on such market value from the date of notification to the date of award, granted by the Collector, Bhagalpur. However, the amount of award already with" drawn by the petitioner, was ordered to be deducted from the total amount of award, calculated at the rate of Rs. 2,000/- (rupees two thousand) per decimal, and thereafter, petitioner was held to be entitled to solatium at the rate of 30 per cent on such market value as awarded above, and was further found entitled to interest on the excess amount at the rate of 9 per cent per annum for the first year from the date dispossession, and thereafter, at the rate of 15 per cent per annum over the enhanced amount, till date of realisation.

4. This first appeal has been admitted by this Court on 5.12.2005 whereafter the aforesaid interlocutory application has been filed on behalf of the appellants whereafter reply/rejoinder was filed on behalf of respondent No. 1 and supplementary affidavit etc. were also filed by the appellants. However, it is an admitted fact that about six acres of land of Kahalgaon (Bhagalpur) including the lands of respondent No. 1 were acquired in the land acquisition proceeding. It appears that notification u/s 4 of the Land Acquisition Act was published in the year 1990 and the appellant got possession of the said land in the year 1991. However, after considering the facts and circumstances of the case, the Land Acquisition Judge has fixed the rate of the said land at Rs. 2,000/- per decimal.

5. Learned counsel for the appellant has submitted that the aforesaid judgment has been passed by the learned court below fixing an exorbitantly high rate, wrongly discarding the sale deeds produced by them. He also produced several orders of this Court as well as Hon'ble Apex Court showing that several land acquisition cases have been stayed and in many cases execution cases have been stayed on the condition that 25 per cent of the awarded amount must be deposited. Learned counsel for the appellant also avers that he has already deposited 25 per cent of the awarded amount in the executing court which has been withdrawn by the land holders including respondent No. 1.

6. On the other hand, learned counsel for the respondents opposes the contentions of learned counsel for the appellant and submits that the decree in question is a money decree and execution of money decrees are generally not stayed by this Court and no exceptional case is made out by the appellant. He produces several orders of this Court which show that such interlocutory applications had been rejected by this Court on the aforesaid ground. Learned counsel for the respondents also relies upon several decisions of Hon'ble Supreme Court as well as of this Court in case of Mehta Teja Singh and Company Vs. Grindlays Bank Limited, and in the case reported in 2000(IV) CLT 251 (SC) and also in case of Rajendra Agriculture University & Ors. Vs. Bhartiya Ispat Udyog Pvt. Ltd. reported in 1996(2) PLJR 548 as well as an order of this Court dated 11.7.2006 passed in First Appeal No. 545 of 2001 in which 50 per cent of the enhanced amount of compensation with solatium and up-to-date interest were directed to be deposited for stay of such land acquisition cases.

7. So far the merit of First Appeal is concerned, it has to be decided after its final

hearing, but so far the amount of compensation fixed by the learned court below at the rate of Rs. 2,000/- per decimal of Kahalgaon does not prima facie appear to be ridiculously or stupendously high. In the said circumstances, it is not proper to deprive respondent No. 1 whose land has been acquired by the authorities from the major portion of the compensation amount awarded in his favour specially in view of the circumstances of this case as well as in view of decision of Hon"ble Apex Court in the case reported in 2000 IV CLT. 251 (SC) and also an order of this Court dated 11.7.2006 passed in First Appeal No. 545 of 2001 (Annexure-7). Accordingly I hereby direct that the aforementioned L.A. Execution Case No. 4 of 2004 pending in the court of Land Acquisition Judge, Bhagalpur shall remain stayed till the disposal of this appeal subject to payment of 50 percent of the enhanced amount of compensation with solatium and up-to-date interest within a period of eight weeks from today. It may be made clear that half of the said 50 percent, namely 25 percent has already been deposited by the appellant and handed over to the awardee without security and hence the other half, namely the remaining 25 percent, has to be deposited by the appellant which will be given to the awardee (respondent No. 1) on furnishing security or Bank guarantee to the satisfaction of the Executing Court. However, while depositing the amount as mentioned above, in the Executing Court the amount already deposited in the court below by the appellant will be permitted to be adjusted. In the said facts and circumstances, this interlocutory application is allowed on the aforesaid conditions.