
(1954) 07 PAT CK 0003

In the Patna High Court

Case No : Misc. Judicial Case No. 52 of 1954

Pannalal Maheshwari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-07-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 12, 12(2), 17, 6

Citation : AIR 1955 Patna 63 : (1954) 2 BLJR 506

Hon'ble Judges : Ramaswami, J;Ahmad, J

Bench : Division Bench

Advocate : S.N. Dutt and R.J. Bahadur, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner Pannalal Maheshwari seeks a writ in the nature of certiorari or mandamus from the High Court remanding the opposite parties to make payment in terms of an award made by the Land Acquisition Officer on 20-11-1952, in respect of certain lands situated in village Khajurahi of the district of Gaya. Cause has been shown by the learned Government Pleader on behalf of the opposite parties in this case.

2. The petitioner claims to be a tenant of 622.63 acres of raiyati kasht land in village Khajurahi. In the year 1949 there was a proposal made by the Government of Bihar for acquiring the land under the provisions of the Bihar Private Protected Forest Act. The petitioner filed an objection which was allowed by the appellate authority under the Act and the land in question was excluded from being acquired. Subsequently the State of Bihar initiated proceedings for acquiring the land under the provisions of the Land Acquisition Act, (1894) (I of 1894). A declaration u/s 6 was issued by the State of Bihar on 11-2-1952. In pursuance of that declaration the Collector of Gaya issued a special notice u/s 9 Land Acquisition Act, on 1-3-1952, and possession of the land was also taken u/s

17 of the Act on behalf of the State of Bihar on 21-3-1952.

The case of the petitioner is that on 15-11-1952, the Land Acquisition officer inspected the locality in presence of the parties and on 20-11-1952, the Land Acquisition Officer made an award fixing the rate of the land at Rs. 150/- per acre with the standing trees and bushes in addition to compensation at the rate of fifteen per cent. The Land Acquisition Officer also valued the proprietary interest which was fixed at the rate of Re. 1/- per acre, and there was a direction that cost of collection should be at the rate of ten per cent. and the Government revenue should also be deducted. A request was also made by the Land Acquisition Officer to the Collector of Gaya to approve the report and it was approved on 22-11-1952. It appears that the report was forwarded by the Collector to the Commissioner of the Patna Division and later on the report was sent to the Board of Revenue.

The case of the petitioner is that in spite of making the award the Collector of Gaya has not tendered the compensation money. On the contrary, he refused to make any payment on the ground that no award was made and signed and all that had been done was a preliminary estimate of costs for budget purposes.

The other allegation of the petitioner is that Government directed the Land Acquisition Officer to re-examine the estimate of valuation and to submit a revised estimate or to give full justification for the existing estimate. The contention of the petitioner is that this interference by the Government is unlawful since the Land Acquisition Officer is the sole authority who is empowered by the statute to fix the valuation of the land on behalf of the State of Bihar. In these circumstances the petitioner has prayed that a writ in the nature of mandamus or certiorari should issue to the opposite parties restraining them from reopening the question of valuation and also commanding them to pay the compensation forthwith to the petitioner.

3. A counter-affidavit has been filed in this case on behalf of the opposite parties challenging the correctness of the allegations made by the petitioner. It is stated in the counter-affidavit that the Land Acquisition Officer did not prepare an award in accordance with Section 11 Land Acquisition Act, but that he merely prepared an estimate of probable cost of acquisition as required by paragraph 21 of Chapter III of the executive instructions printed at page 66 of the Bihar and Orissa Land Acquisition Manual. As regards the payment of compensation the contention of the opposite parties is that the stage for payment has not arisen since no award has been made as yet u/s 11 Land Acquisition Act.

4. The first question to be determined in this case is whether the report of the Land Acquisition Officer dated 20-11-1952, can be taken to be an award within the meaning of Section 11 Land Acquisition Act. The argument presented by Mr. Dutt on behalf of the petitioner is that though the Land Acquisition Officer prepared an order in the form of a report it must be taken to be an award within the meaning of Section 11 Land Acquisition Act. It is necessary in this connection

to examine the language of the order of the Land Acquisition Officer dated 20-11-1952. The report is in the following terms:

"Held local inspection of the land in presence of the parties, Babu Panna Lalla Maheshwari on 15-11-52. This village contains an area of 622.63 acres which is under acquisition. Bushes and thorny plants have been cleared off from the front and back side and some things are found in the middle.

The land under acquisition is not cultivable at present and is not producing any crop, paddy or rabi put the merit of this land is merely similar to the land of village Somea. In view of the above facts, I would fix the rate of the land at Rs. 150/- p. a. with the standing trees and bushes plus compensation at 15 per cent.

As regards the valuation of the proprietary interest it is clear that the tenant pays a sum of Rs. 622-10-0 for 622.63 acres i.e., Re. 1/- p.a. The valuation for the landlord interest is fixed at the above mentioned rate after deducting the collection charges at the rate of 10 per cent. and the Government Revenue.

Submitted to the Collector for favour of approval."

5. The order-sheet of the Land Acquisition Officer is annexed to the petition. The report of the Land Acquisition Officer was sent not only to the Collector but it was also forwarded to the Commissioner of the Patna Division for being approved. On the face of it, the order of the Land Acquisition Officer purports to be an estimate of probable cost. It is also an important fact that the estimate was prepared in form No. 6 printed in the Land Acquisition Manual. If the Land Acquisition Officer made an award, it should have been in form No. 15 which is printed at page 197 of the Land Acquisition Manual. It is clear that if the order of the Land Acquisition Officer is an award in the sense contemplated by Section 11 it would not have been submitted for approval to the Collector or the Commissioner or the Board of Revenue. Lastly it is significant fact that there is no filing of the order of compensation in the Collector's office as required under the provisions of Section 12 Land Acquisition Act. It is also admitted on behalf of the petitioner that no notice of the award was given to the tenant or to the landlord as contemplated by Section 12(2) Land Acquisition Act

In view of these considerations it appears to us that the order of the Land Acquisition Officer dated 20-11-1952, making an estimate of the value of the land is not an award within the meaning of Section 11 Land Acquisition Act, and the argument of Mr. Dutt on the point must fail.

6. In support of his contention Mr. Dutt referred to two authorities--"Dossabhai Benjaji Motivala v. Special Officer, Salsette Building Sites" 36 Bom 599 and -- Padamsi Narayan and Others Vs. The Collector of Thana, . The ratio of these authorities has no application to the facts of the present case. In -- 36 Bom 599 the order of the Land Acquisition Officer was in the following terms:

"I therefore propose to award in the present case compensation for the Khajan land at the rate of Rs. 50 per acre".

It was held by the learned Judges of the Bombay High Court that the order of the Land Acquisition Officer was an award and the Government was not competent to set aside the valuation made by the Land Acquisition Officer and to direct to substitute a smaller amount than that which, as a result of his inquiry, he had determined to offer. It is clear that the Land Acquisition Officer in this case purported to make an award and not a mere estimate of valuation. This case is, therefore, clearly distinguishable.

In the second case reported in -- Padamsi Narayan and Others Vs. The Collector of Thana, the judgment of Shah J. is different from that of the learned Chief Justice. Mr. Justice Shah took the view that an award made u/s 11 would be final and conclusive even though it was not filed in the Collector's office u/s 12 Land Acquisition Act, A different View was taken by the learned Chief Justice, who was of the opinion that an award is not conclusive merely because the Land Acquisition Officer has signed it. But some further formality is required on general principle before it becomes binding on Government and this formality is prescribed by Section 12. The award must be filed u/s 12 in the Collector's office and should become a part of the office record and then only it shall be final and conclusive evidence between Government and the parties concerned.

In any event, the principle of this decision has no bearing to the facts of the present case for the order of the Land Acquisition Officer in the Bombay case is in the following words:

"Proceedings returned, award passed and sent for approval to the Consulting Surveyor through the Collector of Thana".

On the face of this order it purported to be an award and not an estimate, and, therefore, the facts of this case are clearly distinguishable from the present case.

7. It was next contended by Mr. Dutt on behalf of the petitioner that even if the order of the Land Acquisition Officer dated 20-11-1952, was not an award within the meaning of Section 12 Land Acquisition Act, still the petitioner is entitled to a writ in the nature of mandamus compelling the Collector of Gaya to make an award for the lands acquired on behalf of the State of Bihar. The argument of Mr. Dutt on this point is, in our opinion, well founded. It is the admitted position in this case that the declaration u/s 6 was made on 11-2-1952, and notices u/s 9 were issued on 1-3-1952 and possession was taken u/s 17 on 21-3-1952. It is also admitted on behalf of the opposite parties that no award has been made in this case u/s 11, Land Acquisition Act. There has been undue delay made by the Land Acquisition Officer in conducting the inquiry under the Land Acquisition Act to its lawful conclusion. Section 11 of the Act reads as follows: "On the days fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of publication of the notification u/s 4, Sub-section (1), and into the respective interests of the persons claiming the

compensation and shall make an award under his hand of--(i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.", Section 12 is also relevant in this connection. Section 12 reads:

"(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made." It is clear from the perusal of these two sections that the Collector is under the statutory duty to make an inquiry into the valuation of the land and into the respective interest of the persons claiming compensation and to make an award in respect of the matters mentioned in Section 11. Section 12 imposes a further duty upon the Land Acquisition Officer to file the award in the Collector's office to give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. It is clear to us in the present case that the Land Acquisition Officer has failed in performance of the duties cast by the statute upon him under Sections 11 and 12, Land Acquisition Act.

8. For these reasons we hold that a writ in the nature of mandamus should be issued under Article 226 of the Constitution commanding the Collector of Gaya to perform the statutory duty imposed upon him under Sections 11 and 12, Land Acquisition Act, and to bring the land acquisition proceedings to a conclusion in accordance with law as expeditiously as possible.

9. The application is accordingly allowed but we do not propose to make any order as to costs.