
(2015) 02 JH CK 0128
In the Jharkhand High Court
Case No : Writ Petition(C) No. 3445 of 2013

Prabhu Saw and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 17

Citation : (2015) 02 JH CK 0128

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Dilip Kumar Prasad and Jitesh Kumar, for the Appellant; Manoj Kumar No. 3, S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Seeking quashing of order dated 07.05.2012 in Misc. Case No. 1 of 2011-12, the present writ petition has been filed.

2. Briefly stated, the father/grand-father of the petitioners acquired the land comprised in P.S. No. 114, Khata No. 20, Plot No. 2323, admeasuring 5.84 acres and about 1.48 acres in Plot No. 2324, total measuring 7.32 acres by virtue of a Hukumnama granted by the Ex-Landlord, on payment of Salami of Rs. 65/- on 03.04.1943. After the death of Jhagru Mahato, the petitioners came in possession and cultivated the said land. In the year, 2002-03, an area of 3.44 acres from Plot No. 2323 and 1.24 acres from Plot No. 2324 were acquired by the respondent for the purpose of construction/expansion of the Railway Line from Koderma to Ranchi via Barkakana. The land acquisition proceeding was initiated under Section 17 of the Land Acquisition Act and in the said proceeding notice was issued to the petitioners directing them to produce relevant documents. The petitioners submitted documents for verification on 25.11.2002 and a proceeding in Case No. 17 of 2008-09 was initiated and the Circle Officer after verification recommended that raiyati status cannot be granted and the record was sent to the Deputy Collector Land Reforms, Ramgarh. Vide order

dated 20.05.2010, the application seeking grant of raiyati status submitted by the petitioners was rejected. The petitioners preferred Misc. Appeal No. 18 of 2010-11 before the Additional Collector, Ramgarh and the Additional Collector recommended for grant of raiyati status to the petitioners for about 4.68 acres of land in Khata No. 20 of Village-Mandu. The Deputy Commissioner came to the conclusion that the jamabandi-holder is entitled for compensation to be paid by the Railway Department. However, since no compensation was paid to the petitioners, they approached this Court in W.P.(C) No. 1130 of 2012 which was disposed of vide order dated 21.03.2012 directing the District Land Acquisition Officer to consider the claim of the petitioners and pass appropriate order within six weeks. In pursuance thereof, the District land Acquisition Officer passed order dated 07.05.2012 which has been challenged by the petitioners in the present proceeding.

3. A counter-affidavit has been filed denying the averments made in the writ petition. It is stated that the Sada Hukumnama submitted by the petitioners is false and fabricated document. It has further been denied that the land comprised in Plot No. 2323 and Plot No. 2324, total area 4.68 acres allegedly belonging to the petitioners has ever been acquired rather, the Railway Authorities were allowed to start construction of work. The said land is recorded as Gair Majurwa Khas land belonging to the State of Jharkhand.

4. Heard the learned counsel appearing for the parties.

5. The learned counsel appearing for the petitioners referring to Sections 17 and 118 of the Chhotanagpur Tenancy Act, submits that after lapse of 12 years, the petitioners became the raiyats/landlords of the land in question. Jamabandi has been created in the name of the petitioners and the petitioners have been paying rent and therefore, without cancelling the jamabandi in the name of the petitioners, and acquiring the said land and paying compensation to the petitioners, the said land could not have been utilised by the Railways for construction/expansion of the Railway Line. It is further submitted that the Deputy Commissioner in his order dated 18.10.2011 has recorded that the raiyats are entitled for payment of compensation. Referring to a communication by the Railway Authorities to the Land Acquisition Officer, the learned counsel for the petitioners submits that the Railways has accepted the claim of the petitioners and compensation amount has already been deposited nonetheless, the District Land Acquisition Officer has rejected the claim of the petitioners on erroneous grounds.

6. Mr. Manoj Kumar, the learned S.C. (Mines) appearing for the State of Jharkhand reiterates the stand taken in the counter-affidavit and submits that the notification dated 14.05.2009 on which the petitioners have placed reliance is not applicable in case of the Railways. The decision reflected in the said communication is applicable in cases where land has been acquired by the Government for the Public Sector Undertakings.

7. Having heard the submissions of the learned counsel appearing for the parties and after perusing the documents on record, I am of the opinion that the writ petition is liable to be dismissed. In Misc. Case No. 18 of 2010-11, the Additional Collector, Ramgarh observed that Raiyati status can be granted to 4.68 acre of Gair Majurwa Khas land and vide order dated 05.02.2011, a recommendation for grant of Raiyati status for 4.68 acre land was forwarded to the Deputy Commissioner and the Deputy Commissioner vide order dated 25.02.2011 closed the proceeding holding that the Railways is liable to pay compensation to the jamabandi-holder. However, the proceeding in Misc Case No. 18 of 2010-2011 indicates that the petitioners laid their claim for compensation on the basis of the Government notification dated 14.05.2009. As noticed above, the Additional Collector, Ramgarh had recommended that Raiyati status may be granted to 4.68 acre Gair Majurwa land. The proceeding in Misc. Case No. 18 of 2010-11 was not initiated for grant of compensation to the petitioners. There is no determination of the right of the petitioners that the petitioners are entitled for grant of compensation for the alleged acquisition of land by the State Government. The State Government has taken a specific stand that the land in question is a Gair Majurwa Khas land and therefore, it was not acquired rather, it was handed over to the Railways for construction/expansion of the Railway Line. A decision has been taken by the State Government in this respect for payment of compensation in cases where the land has been handed over to the Public Sector Corporation/Companies only. Admittedly, in the present case, the land in question has been handed over to the Railways which is not a Public Sector Undertaking rather, it is a Government Company. The learned counsel for the petitioners has relied on communication dated 18.08.2011 to contend that a direction was issued by the Railways to the District Land Acquisition Officer to make full payment to the land owners however, no payment has been made to the petitioners. A perusal of order dated 08.08.2011 does not indicate that a direction was given to the District Land Acquisition Officer, Ramgarh for payment of compensation to the petitioners. The learned counsel for the petitioners has also relied on communication dated 13.06.2011 whereby the District Land Acquisition Officer, Ramgarh wrote letter to the Deputy Chief Engineer (Construction), Railways requesting for providing an amount of Rs. 1,55,30,915/- for compensation in respect of 4.65 acre land in Thana No. 114, Mandu however, I find that it does not appear from the said letter that such amount has been requisitioned for payment to the petitioners. I further find that though letter dated 18.08.2011 refers to 4.65 acre Raiyati land in village Mandu and letter dated 13.06.2011 also refers to 4.65 acre land in Thana No. 114 Mandu, the proceeding in Misc Case No. 18 of 2010-2011 pertains to 4.68 acre of land in Khata No. 20. The proceeding in Misc. Case No. 18 of 2010-11 was an appeal against order dated 22.05.2010 in (Railway) Raiyati Manyata Case No. 17 of 2008-09. The reliance of the counsel for the petitioners on Sections 17 and 118 of the Chhotanagpur Tenancy Act is contrary to the stand taken by the petitioners in as much as, the petitioners have taken a stand that they are raiyats and the land in question was settled in the name of their father/grand-

father by a Hukumnama. The Land Acquisition Officer in impugned order dated 07.05.2012 has clearly stated that the notification 14.05.2009 is not applicable in the present case. The land in question has not been acquired rather, it was a Government land which was handed over to the Railways. The creation of jamabandi in the name of the petitioners does not establish the title of the petitioners over the same.

8. I find no merit and accordingly, the writ petition is dismissed. However, if the petitioners prove their title over the land in question in a judicial proceeding (Title Suit etc.), they may agitate their claim for compensation before the District Land Acquisition Officer, Ramgarh.