

(2012) 01 PAT CK 0148
In the Patna High Court
Case No : CWJC No. 3059 of 1997

Prahalad Dubey and Others		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 144
Land Acquisition Act, 1894 — Section 18, 30

Citation : (2012) 3 PLJR 668

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : S.S. Dwivedi, Rakesh Chandra, R.K. Dubey, Mrs. Sangeeta Sharma, for the Appellant; O.P. Agrawal for the State, for the Respondent

Final Decision : Allowed

Judgement

Shivaji Pandey, J.—Heard learned counsel for the petitioners and the learned counsel for the State. No one appears on behalf of the Municipality. As per the petitioner, the original petitioner Raj Kumar Dubey died during the pendency of this writ petition and vide order dated 31st October, 2010, his heirs were substituted.

2. The petitioner has made a prayer to command the respondents not to disturb the construction of shopping complex being made by the petitioner and his other co-sharers by creating obstruction abusing the official power and has also prayed that they should be prevented from disturbing the possession of the petitioner over the land in question, in any manner, as title of the petitioner over the disputed land has been declared in favour of petitioner by order of the competent court and also has claimed compensation for the loss and damage caused to the petitioner at the rate of Rs. 50,000/- per year from 1989 onwards till date.

3. The facts of the case are that the disputed land of Village-Chanauthu of C.S. Khata No. 86, C.S. Plot No. 256, Municipal Survey Plot No. 202, measuring an area of 0.58 decimals and at present the disputed area is 29? decimals belonged

to one Harun Koiri. In the year 1888, Sasaram Municipality acquired the land and constructed a road connecting Shershah Rauza with the Grand Trunk Road called Mackfarsan Road and the same has now renamed as Shershah Tomb Road. During the Cadastral Survey, lands left over from the road were recorded in the name of Sasaram Municipality vide S.C. Plot Nos. 256 and 257 of Village-Chanauthu. The ancestors of petitioner namely, Bhagelu Dubey was the temporary settler by Sasaram Municipality but continued in possession and thereby acquired occupancy right by way of adverse possession. It is undisputed fact that the land in question was of Sasaram Municipality but as the land remained in adverse possession, according to the petitioner, they acquired occupancy right over the land.

4. In the year 1947, Sasaram Municipality filed Title Suit No. 304 of 1947 for declaration of title as well as recovery of possession against Bhagelu Dubey before the Munsif, Sasaram alleging therein title. The suit was contested by the defendants on the ground of their having occupancy right in over the aforesaid land and they have acquired absolute right, title and interest over the same, ultimately, the suit was dismissed against the Sasaram Municipality. Being aggrieved by the judgment and decree, Sasaram Municipality filed an appeal bearing Title Appeal No. 2/30 of 1950-51 which was ultimately heard and disposed by the Subordinate Judge, Sasaram. The Municipality against the aforesaid judgment and decree filed Second Appeal No. 1196 of 1951, this Court vide judgment dated 13th November, 1956 dismissed the same. The Court considered every aspect of the matter and has come to the conclusion that the petitioners were in cultivating possession over the land in dispute for about 40 years continuously and without interruption. On the basis of this finding the petitioner was declared to have acquired occupancy right, and, accordingly, the Second Appeal was dismissed, vide Annexure-1 to the writ petition.

5. According to the petitioner, during the pendency of the 2nd appeal, Sasaram Municipality started proceeding under the Bihar land Encroachment Act against sons of Bhagelu Dubey in respect of the aforesaid land and other lands, which was registered as Encroachment Case No. 172 of 1951. However, this proceeding was dropped with the finding that the land was not a public land, rather it belonged to son of Bhagelu Dubey as they have acquired title over the same.

6. In the year 1958, the State of Bihar in order to widen the Shershah Tomb Road and to create its flanks, made acquisition of the land from both sides and the road and acquired 2.5 decimals of land from plot no. 256, 23 decimals from plot no. 318, 2.5 decimals of plot no. 230, 23 decimals of plot no. 257 and 22.5 decimals of plot no. 254. Accordingly, the award was prepared by the Land Acquisition Officer in the name of sons of Bhagelu Dubey. The Sasaram Municipality filed an objection claiming ownership over the land and claimed that compensation of the acquired land should be paid to the Municipality. The Land Acquisition Officer referred the dispute under Sections 18 and 30 of the Land Acquisition Act to the Civil Court and the matter was contested between the

parties. Ultimately, vide judgment dated 10th August, 1963 the Subordinate Judge, Sasaram decided the case in favour of sons of Bhagelu Dubey holding that they are the occupancy tenant and are in possession of the land and as such, they were entitled to compensation of the acquired land. The Municipality challenged the award passed under the land acquisition proceeding before this Court vide First Appeal No. 555 of 1963 and ultimately the appeal was dismissed vide order dated 28th April, 1969 and thereby the claim of the Municipality was rejected and this Court held that the court below has rightly come to the conclusion. The Court had refused to interfere with the view taken by the Sub-Judge and, accordingly, compensation was paid to sons of Bhagelu Dubey.

7. The petitioner has claimed that after the decision of this Court on repeated occasions some of the shareholders had sold the land to different persons namey, Jangi Dubey sold a part of C.S. plot no. 256 in favour of Rewati Raman Sinha who constructed a building upon the land and still he is in occupation of the same. It has further been stated that registered sale-deeds were executed on 2nd January, 1974, 3rd January, 1974 and 11th March, 1974 to different persons. It has further been submitted that 3 decimals of land was sold to one Smt. Durgesh Nandini wife of Sankatha Prasad. Smt. Durgesh Nandini had applied for mutation which was refused and this Court vide order dated 19th July, 1979 passed in C.W.J.C. No. 3157 of 1978 had set aside the order and remanded back the matter to the authority concerned for consideration and passing necessary (sic--order?) and on remand the land was recorded in the name of Smt. Durgesh Nandini.

8. When she started construction over the land, a proceeding u/s 133 Cr.P.C. was initiated against said Durgesh Nandini which was ultimately challenged before this Court vide Cr. Misc. No. 3238 of 1975 and this Court held that the land in question is not a public land and passed the order in favour of Durgesh Nandini. However, while allowing the case, this Court held that if the land in question falls within the prohibited area declared to be so by the competent authority, the learned Magistrate would be at liberty to initiate a fresh proceeding for removal of the encroachment.

9. Learned counsel for the petitioner has stated that from the court proceeding, it is apparent that the petitioners have valid title and possession over the land in question but in the year 1989, the Hospital authorities had tried to put a temporary structure over the land in dispute which was objected by the petitioner and on objection, the Superintendent of Govt. Hospital, Sasaram wrote a letter to the Land Acquisition Officer, Rohtas, Sasaram to give information with regard to the acquired land for the purpose of Hospital as it was necessary to know whether the land of the petitioner had been acquired for the Hospital or not. The Land Acquisition Officer addressed a letter to the Deputy Collector, Revenue, Rohtas giving details of the land acquired and at the end it has been stated that the disputed plot (C.S. No. 256) has not been acquired by the State for the Hospital. It has further been averred that again the Superintendent of

Sadar Hospital, Sasaram in order to find the status of the land wrote tatter to the District Land Acquisition Officer as well as the Sub-Divisional Officer, Sasaram regarding the character of the acquired land. In turn, the S.D.O. called a report from the Executive Officer, Sasaram Municipality and in response to the same, the Land Acquisition Officer vide Letter No. 62 dated 29th March, 1990 (Annexure-8) informed the Civil Surgeon that C.S. plot no. 256 has not been acquired for the Hospital. The Executive Officer, Municipality wrote letter no. 560 dated 14th May, 1990 to the S.D.O., Sasaram, in which he has specifically stated that as per the land records, it has been recorded in the name of Municipality but possession has been recorded in the name of Bhagelu Dubey. In the said letter it has been stated that the matter with regard to the land had gone to the High Court and this Court has passed order in favour of petitioner and, accordingly the petitioner had acquired right, title over the land in question. It has also been stated that plot C.S. plot no. 256 has not been acquired by the State and, accordingly, the right, title holder of the land are the petitioners and their other family members.

10. According to the petitioners, every thing was moving very smoothly and as the petitioner was in need to construct building over the land in dispute, he wrote different letters to the Superintendent of Sadar Hospital, Sasaram, Respondent No. 6 to remove the illegal structure over the land in question which has been stated in Para-18 of the writ petition whereupon the Superintendent of Hospital, respondent no. 6 vide letter no. 733 dated 10th August, 1992 requested the Executive Engineer, P.W.D. to delineate and demark the land of the Hospital, may be carved out. In pursuance of the same, measurement and demarcation was done and, accordingly, a letter dated 22nd January, 1993 (Annexure-12) was addressed to the Circle Officer, Sasaram. This letter shows that the land of the Hospital vis-a-vis land of petitioner were carved out and completely demarcated. Another letter of the Junior Engineer dated 6th February (sic--1993?) (Annexure-13) addressed to the Executive Engineer, P.W.D., Sasaram shows that the land of the Hospital was demarcated and delineated the land of the Hospital which was acquired by the Government was carved out with a view to avoid future dispute. It appears from another letter of the Executive Engineer dated 19th April, 1993 (Annexure-14 to the writ petition) to the Superintendent of Government Hospital, Sasaram who was interested for acquiring the land for the Hospital, after examining the location and situation of the land gave his opinion that the plot is only a strip and it would not serve any purpose to the Hospital. That letter also shows that the land has been demarcated and pillars were sunk. Later on 19th April, 1993, it appears that pillars were affixed, in this way there was no confusion that C.S. plot no. 256 was not acquired by the Government rather it remained in the exclusive possession of the petitioners having title over the same. It has been stated that as the land is nearer to the monument, comes under the purview of Bihar Restricted Uses of Land Act, 1948, before any construction permission of the District Magistrate was required.

11. A petition was filed before the Collector, Sasaram to grant permission to build shop to augment income. An opinion was sought from the District Engineer, Zila Parishad. The District Engineer, Zila Parishad, vide letter dated 7th August, 1993 has sent his No Objection Certificate in favour of petitioner. It has further been averred that the objection remained pending before the District Magistrate. He neither refused the permission nor granted permission for construction of building which remained pending for six months and as such, under law it will be deemed, permission was granted to the petitioner for construction.

12. After being satisfied that there is no hindrance in construction of boundary wall or any building, petitioner tried to make construction of the boundary wall in order to separate his land from the land of the Hospital. Then an objection was raised by the Superintendent of the Sadar Hospital, Sasaram and at the instance objection, a proceeding u/s 144 Cr.P.C. was initiated. Petitioner submits that as the petitioner has right, title and interest over the land and by this process the respondents cannot prohibit petitioner to construct boundary wall or any construction over the same and for that the present petition has been filed before this Court for the relief as stated above.

13. It appears from the record that the State authority was of the view that the land falls within the boundary of the Hospital and petitioner wrongly and illegally wants to create a boundary wall. They are of the view that it is the land which in use of the Hospital for such a long period and, as such, petitioner does not have a right to make construction. It will cause inconvenience to the Hospital because the land is used as passage in between two wards of the Hospital.

14. Although counsel for the Municipal Corporation is not present, they have filed a counter affidavit and disputed the claim of the petitioner. Learned counsel for the State has drawn attention of this Court to Paras-12, 17 and 18 of the counter affidavit from perusal of which it appears that although they have accepted title of the petitioner and also accepted that there is a judgment and decree of this Court passed in the second appeal, declaring adverse possession of the petitioner, but in the next breath has said that the land in question was acquired but without giving any details as to what was the area of the land acquired and the State Counsel further stated that the case of Rewati Raman Sinha and Durgesh Nandini is quite different as those lands fall outside the campus of the Hospital whereas this land lies within the boundary of the Hospital and the Hospital is in use of the land for more than 35 years and it stands amalgamated with other lands of the Hospital which consists of septic tank, Hospital latrine, major portion of the wards since time immemorial.

15. Having considered the rival submission of the parties, one thing is very clear that earlier the land in dispute was standing in the name of the Municipal Corporation but after some time, it was settled with Bhagelu Dubey who continued with the possession of the same and acquired occupancy right. Occupancy right has been defined in Advanced Law Lexicon, at Pg. 3288 is as follows:--

Occupancy right--The term commonly used in reference to cultivators who have higher rights in the land they cultivate than mere tenants-at-will. The rights vary in different cases, but generally include right of transfer and of transmission by inheritance and undisturbed possession so long as the stipulated rent is paid.

Occupancy rights are creatures of statutes, or to be more precise the creatures of custom adopted by statute, which by defining the nature of the evidence which, a person claiming such rights is required to adduce, have extended such rights to larger class of ryots. They are creatures of customs or of statutes in the sense that accusation of such rights by ryots does not depend upon the bounty or gift of the landlord, but they can be acquired against his will. This does not imply that the landlord cannot by grant confer on his tenant rights exactly similar to rights of occupancy. He can in his grant define rights which he is granting to his tenants, by mentioning in detail in the different clauses of the Patta the exact incidents of the rights he is granting. If he does so, the ryot or tenant would get those rights.

16. From the meaning that has been given it shows that the persons acquired occupancy right by using the land for quite long period and thereby acquired a right over the land.

17. From the documents as has been stated above, it is not in dispute that on different occasions, there was litigation between the State and the Municipality on one side and the petitioner on the other side and on different occasions orders were passed in favour of petitioner or in favour of his brothers. Even on the land which was alienated in favour of 3rd party, obstruction was made in construction of building which led to initiation of a proceeding u/s 133 Cr.P.C. which was quashed by this Court. So there is no doubt that the land belongs to the petitioners and they have acquired right, title and possession over the same by acquiring the status of occupancy raiyat. It also appears from the record that a dispute arose between the Hospital authority and the petitioner on the ground that the land of the petitioner falls within the boundary of the Hospital. The authorities were directed to delineate the land between the building of the Hospital vis-a-vis of the petitioner and, accordingly, the record shows that the land was delineated and pillars were sunk.

18. This Court is conscious of well known principles of *Salus Populi Est Suprema Lex* (Regard for public welfare is the highest law). This principle is based on theory, every member of society that his own individual welfare shall, in cases of necessity, yield to that of the community. Considering aforesaid principle, it is directed that if the authorities are interested and feel that the land is required for the purpose of the Hospital, they can initiate a proper proceeding and can acquire the same but so long it belongs to the petitioners, no State authority has authority and jurisdiction to disturb the petitioner or to interfere with enjoyment in any manner. Every citizen has a right to hold property and to use the same in his own way and choice and they cannot be deprived of the same except by process of law.

19. If the public purpose demands, the executive can acquire the property on payment of compensation to citizen. The law of land is equally applicable to citizen or to State agency as well. Any action beyond authority is an act of arbitrariness. The action of executive depriving any citizen of enjoyment forcibly and illegally with an administrative fiat is an administrative tyranny which cannot be approved under any democratic system or under our constitutional scheme.

20. If the land in dispute falls outside the boundary of the Hospital, it is expected that the State authorities will not interfere with the possession of the petitioner, in any manner whatsoever and if it is otherwise, in that case, as directed above, the Collector shall demarcate and delineate the land in dispute so that there may not be any future litigation between the parties. With the aforesaid observations and directions, this writ petition is allowed.