

(1967) 09 PAT CK 0012
In the Patna High Court
Case No : A.F.A.D. No. 31 of 1963

Raja Ram Singh and Others

APPELLANT

Vs

Kishori Saran Singh and Others

RESPONDENT

Date of Decision : 01-09-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Defence of India Act, 1939 — Section 9

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 19, 8(1)

Citation : AIR 1968 Patna 500

Hon'ble Judges : Shambhu Prasad Singh, J; Ramratan Singh, J

Bench : Division Bench

Advocate : Amala Kanta Choudhury, for the Appellant; R.S. Sinha, R.C.P. Sinha, L.N. Yadav and B.N. Chatterji, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and decree of an Additional Subordinate Judge of Patna, affirming the decision of the 3rd Additional Munsif, decreeing a suit instituted by the respondents & their ancestor, Gulabi Bhagat who died during the pendency of the suit, for a declaration that they had one-half interest in a culturable area of 9 kathas in survey plot No. 12 and for another declaration that they were entitled to one-half of the compensation money allowed in Land Acquisition Case No. 83 of 1944-45. A reading of the plaint and the written statement indicated that the land had been acquired in a proceeding under the Land Acquisition Act, 1894; but when counsel for one of the parties showed to us the judgment of the 1st Court in the land acquisition proceeding, it transpired that the acquisition had been made under the Defence of India Act, 1939. Section 19 of that Act required that, in case there was no agreement about compensation between the Government and the party whose property had been requisitioned and acquired, an arbitrator would be appointed to determine the same and appeal would lie to the High Court against the award of the arbitrator.

Sometime after the end of the second World War, the said Defence of India Act ceased to be in force and certain Acts were made in 1947. so that the action taken thereunder would not become invalid. Ultimately, however, those Acts were also superseded by the Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952) but all actions taken under the repealed Acts were kept valid and alive by Section 24 of this Act. The land which is the subject-matter of the present suit had been included in a larger area which had been acquired under the Defence of India Act, 1939. Mr. Radha Pd. Singh, District & Sessions Judge of Patna, was appointed by the Government the sole arbitrator to determine the amount of compensation payable to the owners of the lands under a notification which reads as follows:

"No. C/R2-104/57-C.9009 in exercise of the powers conferred by Clause (b) of Subsection (1) of Section 19 of the Defence of India Act, 1939 (Act XXXV of 1939) read with Clause (b) of Sub-section (1) of Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act XXX of 1952) and notification no 1608-E-11/53 dated the 8th May 1953 issued under Sub-section (1) of Section 17 of the said Act by Government of India, Ministry of Works, Housing and Supply the Governor of Bihar is. in partial modification of notification No. C/R2-107/56-15362C dated the 26th December 1956, pleased to appoint Sri Radha Prasad Singh, District & Sessions Judge of Patna as arbitrator to determine the amount of compensation payable to the owners of the land measuring more or less 7.9594 acres in village Moharrampur, Pargana Azimabad, District Patna, acquired under notification No. 525/R-16-11/45 dated the 16th February 1945, published in the Bihar Gazette dated the 21st February, 1945."

Some assessors had also been appointed to assist Mr. Radha Prasad Singh under the Act of 1952. At page 2 of the award of Mr. Singh, the names of the claimants in all the 17 cases of acquisition are mentioned, and the name of Raja Ram appears against serial No. 8 and his area has been shown as 0.266 acres. The name of Gulabi Bhagat or his descendants, who are respondents in the present appeal, does not appear in the award, the judgment or award was given on 29-1-1958. There is an order dated 17-12-1957 in the ordersheet (Ext. 10), in which it is stated that no lawyer appeared before the arbitrator for Gulabi Bhagat and, therefore, the arbitrator passed the same which reads thus: "The petition of Gulabi Bhagat is rejected and the question of title of Gulabi Bhagat is left open to be decided in title suit." This petition is not on record; but apparently the petition was in respect of his claim to get a share in the compensation money; because his name does not find place either jointly with Raja Ram or separately from him in the list given at page 2 of the judgment of the arbitrator.

In paragraph 43 of the judgment too, the learned arbitrator has said in respect of the suit land that the schedule shall be prepared in the name of Raja Ram in whose name the Khatian stands and the question of title of Gulabi is left open and this will not prejudice his right if any. As provided by the law, an appeal lay to the High Court against the decision of the arbitrator, and in fact several

appeals were preferred by some of the claimants; and this appeal was decided by a Bench of this court on the 3rd October, 1962 (see judgment, Ext. 8). Neither Raja Ram, Gulabi Bhagat and his descendants preferred any appeal against the decision of the arbitrator. Hence, so far as the suit land is concerned, the award remained unaffected by the appeal in the High Court. Gulabi and his descendants instituted the present suit in 1958.

2. Mr. Choudhury, who appeared for the appellants, i.e., Raja Ram and his minor sons, challenged the Judgment and decree of the court below on two grounds namely, (1) that a civil suit does not lie in respect of the compensation, and (2) that the suit is barred by res iudicata.

3. In support of his grounds, he drew our attention to the provisions and the scheme of the Act of 1952. Section 2 contains the definitions. Sections 3 to 6 deal with the requisitioning of immovable property. Section 7 contains the power to acquire requisitioned property. Section 8 lays down the principles and method of determining compensation where any property is requisitioned or acquired under this Act. Clause (b) of Sub-section (1) of this section provides that, where no agreement can be reached between the claimant and the Government about the amount of compensation, the Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as a Judge of a High Court. Clauses (e), (f) and (g) of that subsection read as follows:

"(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of Sub-sections (2) and (3), so far as they are applicable:

(f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons;

(g) nothing in the Arbitration Act, 1940 shall apply to arbitrations under this section "

Sub-section (3) contains the principle for determining the compensation payable for the acquisition of any property u/s 7 of the Act. Section 9 lays down that the amount of compensation payable under an award shall, subject to any rules made under this Act, be paid by the competent authority (which is defined in Section 2) to the person or persons entitled thereto in such manner and within such time as may be specified in the award. Section 10 contains the provisions for appeals from orders of requisitioning, Section 11 contains the provisions, for appeals from awards in respect of compensation and it lays down that any person aggrieved by an award of the arbitrator made u/s 8 may prefer an appeal to the High Court concerned within thirty days from the date of such award; but the delay in such an appeal may be condoned by the High Court in appropriate

cases Section 12 gives to the arbitrator, appointed u/s 8, certain powers of the civil court contained in the Civil Procedure Code, namely, summoning and enforcing the attendance of any person, requiring the discovery and production of any document, reception of evidence on affidavits, requisitioning any public record from any court or office, and issuing commission for examination of witnesses. Sections 13 to 16 are not important, Section 17 enables the Central Government to delegate its powers under the Act to the State Government or any officer subordinate to that Government. Section 18 is not necessary for our purposes. Section 19 enacts:

"Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the competent authority or arbitrator is empowered or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

Sections 20 21 and 25 are not relevant. Section 22 contains the rule making power. Section 23 validates certain requisitions and acquisitions made before the enactment of the Act of 1952. Section 24 repeals the earlier enactments and contains savings as to certain matters.

4. The contention of Mr. Choudhury that the civil court has no jurisdiction to entertain any suit in respect of compensation payable under this Act is supported by Section 19 read with Clause (f) of Sub-section (1) of Section 8. According to Section 19, save as otherwise expressly provided in this Act, the Civil court has no jurisdiction in respect of any matter which the arbitrator is empowered by or under the Act to determine. It will be noticed that, according to Clause (f) of Section 8(1), that arbitrator is empowered to decide any dispute as to the person or persons who are entitled to the compensation and, if he finds that mere persons than one are entitled to the same he is empowered to apportion the amount thereof amongst such persons. There is no provision in the Act to the contrary. Gulabi Bhagat and his descendants should have, therefore, pressed their claim before the arbitrator and they must suffer on account of their default in doing so. They did not even care to prefer any appeal to the High Court against the award of the arbitrator, nor did they move the High Court under Articles 226 and 227 of the Constitution. It cannot be said that the arbitrator deliberately refused to consider their claim. The order dated 17-12-1957, referred to earlier, clearly shows that nobody appeared for Gulabi Bhagat who had filed a petition, and the petition was rejected for default. There can be no doubt, therefore, that the Civil Court is not competent to entertain the claim of the plaintiffs in the present suit.

5. Mr R. S. Sinha, who appeared for the respondents, however, relied on the observation of the learned arbitrator in his order dated 17-12-1957 as also his judgment that the question of title of Gulabi Bhagat was left to be decided in a title suit. But the arbitrator could not confer on the civil court a jurisdiction which was barred u/s 19 of the Act of 1952. No decision has been cited on behalf of

either party on this point. The contention of Mr. Choudhury must, therefore, prevail.

6. Then, Mr. Choudhury submitted that the claim of the plaintiffs in the present suit was barred by the principles of *res judicata*, because the arbitrator decided that the entire compensation money would go to Raja Ram in respect of the suit land and the mere observation of the arbitrator that the question of title of Gulabi Bhagat was left open to be decided in title suit cannot change the legal position. In support of this contention he relied on a bench decision of this Court in *Ganesh Jha Vs. Baidyanath Jha and Others*, . The appeal before their Lordships arose out of a title suit involving the question whether a sale deed was genuine and for consideration and for legal necessity. In a previous title suit an issue had been framed on this point, but the suit was dismissed on the ground that the sale deed was collusive and without consideration and the court did not go into the question of legal necessity, because it wrongly thought that the question could not be gone into, inasmuch as all the reversioners had not been impleaded in that suit. It was held that in spite of this observation of that court the question of legal necessity must be deemed to have been impliedly decided against the plaintiff in the previous suit and, therefore, the question was barred by the principle of *res judicata* in the subsequent suit which was under appeal before their Lordships.

In coming to this decision, the bench of this court relied on a decision of the Privy Council in AIR 1925 55 (Privy Council) . The appellants before the Privy Council brought a suit to set aside a gift made by a Hindu widow out of her husband's estate; they alleged that they were presumptive heirs. After the death of the widow the appellants applied to amend their plaint by setting up a family custom of inheritance, and by claiming possession of a share in the whole property. Upon that application failing, and the appellants admitting that apart from the alleged custom they could not succeed, the Subordinate Judge dismissed the suit, but gave them liberty to file a fresh suit for possession. Subsequently the appellants brought a suit to recover from parties to the former suit a share in the property, basing their claim upon family custom. It was held that the suit was barred by *res judicata* under the Civil Procedure Code, 1908, since the custom was a matter which might and ought to have been set up in the former suit. It was further held that the Subordinate Judge, having dismissed the suit, had no power under order 23 of the CPC to give liberty to bring a fresh suit.

Similarly, in the instant case, the learned arbitrator had no power to give an option to Gulabi Bhagat to bring a title suit in respect of his claim, when he did not choose to press it before the court. In order to meet these decisions, Mr. Sinha cited another decision of the Privy Council in *Parsotam Gir v. Narbada Gir* (1899) 26 IA 175 (PC). In that case, a former suit between the same parties in the same court and for the same relief resulted in a decree of dismissal, the judgment leaving it open to the plaintiff to bring a fresh suit and leaving "untouched and undecided all matters" affecting the rights of the parties. It was

held that such a decree did not constitute *res judicata*, because the matters in question had not been finally decided. The facts of that case were, therefore, completely different. It appears from the Judgment of their Lordships that the suit which went up to the Privy Council in that case was not based on the same cause of action as the earlier suit, and it was against one Narbada Gir in his personal capacity, whereas in the earlier suit it was against him in the capacity of legal representative of his deceased father, the original defendant.

7. Mr. Sinha also relied on a bench decision of the Madras High Court in *Alluri China Bapanna and Others Vs. Sri Mattangi Jaggiah alias Jaggarao Garu and Others*, but that decision is also distinguishable. Regarding the matter in respect of which the plea of *res judicata* was taken, issue No. 9 had been framed in the earlier suit, and that was the only issue which might have settled the disputes raised by the defendants of the suit which went up to their Lordships of the Madras High Court; but the court refused to adjudicate upon that issue in the earlier suit and left it open; and that is why their Lordships said that the subsequent suit was not barred by *res judicata*. Another argument of Mr. Choudhury was that like the Land Acquisition Act of 1894, the Act of 1952 is a self-contained code, and it was held by the Privy Council in AIR 1931 1 (Privy Council) that it was for the person claiming compensation to establish his title to the property acquired affirmatively before the court contemplated by the Act of 1894. In *Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others*, their Lordships decided that a plea of *res judicata* on general principles can be successfully taken in respect of judgments of courts of exclusive jurisdiction, like revenue courts, land acquisition courts, etc, and in that case; a decision under the Land Acquisition Act of 1894 was held to operate as *res judicata*.

But the answer of Mr. Sinha to these two decisions is that the authority deciding a dispute regarding compensation under the Land Acquisition Act of 1894 is a court in the real sense of the word, whereas, according to the decision of the Supreme Court in *Hans Kumar Kishanchand Vs. The Union of India (UOI)*, the arbitrator appointed u/s 19 (1) of the Defence of India Act, 1939, is not a court, nor does the High Court decide an appeal against the award of the arbitrator as a court: and, therefore, Mr. Sinha submitted that there can be no question of *res judicata* on account of the award of the arbitrator in the instant case. From a report at page 5 of "The Statesman" (Delhi Town Edition), dated the 30th August, 1967, it appears that the Supreme Court has now taken a view contrary to this decision; but so long as the report of the recent decision is not available we cannot act on the same. It is, however, not necessary to decide the plea of *res judicata* taken by Mr. Choudhury, because the present suit fails on account of our decision that the civil court has no jurisdiction to entertain the same.

8. In the result, the appeal is allowed, the judgments and decrees of the court below are set aside and the suit is dismissed; but in the circumstances of the case, parties will bear their own cost throughout.