(1937) 04 PAT CK 0002

In the Patna High Court

Sita Ram and Others — APPELLANT

Vs

Secretary of State and Another — RESPONDENT

Date of Decision : 06-04-1937

Acts Referred:
Limitation Act, 1963 — Article 149 Schedule 1, 49

Citation : AIR 1937 Patna 568

Hon'ble Judges : James, J;Dhavle, J

Bench : Full Bench

Judgement

James, J.—In 1900 the Local Government on behalf of the Government of India acquired under the Land Acquisition Act of 1894 a large area of land for the purpose of the Bengal and North Western Railway. By a contract of 18th July 1890 between the Secretary of State and the Bengal and North Western Railway Company, the Tirhut State Railway had been made over to the Bengal and North Western Railway Company for management by the company, with the proviso that the land which might be acquired for the purpose of the railway should, unless it were actually required for railway purposes, be relinquished to the Secretary of State. The land acquired in 1900, apparently with some exceptions including the land in suit in the present case, was duly made over to the Bengal and North Western Railway Company for the purpose of the Katihar-Hajipur extension of the Tirhut State Railway. The land in question in the present suit is 1''52 acres out of Plot No. 7213 of the survey, contained in Plots Nos. 45, 46, 48 and 49 of the plan prepared at the time of the acquisition. It appears that the land was not made over to the railway, since, when the Record of Rights was prepared in 1906'', it was recorded as the raiyati holding of one Meghu and as part of the Dharampur estate. This entry appears to have been erroneous because it has been found that the land was acquired in 1900; and by the acquisition under the Land Acquisition Act and the statutory rules of 1895 made by the Government of Bengal under the Act, the acquired land became a part of a revenue free estate, and it ceased to be part of the Dharampur estate which was in the possession of the Maharaja of Darbhanga. Some time after 1906 one

Ram Rachhya Singh purchased Maghu Gangota''s holding which according to the defendants was transferable by custom; and in 1924 the son of Ram Rachhya Singh sold it to the defendant of the present suit. The area of 1.52 acres according to the survey forms a part of Plot No. 7213 with a total area of 4.39 acres, held under the Dharampur estate; and it appears that these purchasers in due course paid rent and were granted receipts by the Maharaja of Darbhanga who is the zamindar of Dharampur. In 1929 the Secretary of State, joining with the Bengal and North Western Railway Company, instituted a suit for ejectment; of the cultivators from the area which was acquired in 1900. The Subordinate Judge by his appellate decision in the suit has found that the Secretary of State was entitled to recover possession of this land, and that the defendants could not claim to be bona fide tenants entitled to the protection of the provisions of Ch. 5 and 6, Ben. Ten. Act. The defendants have preferred a second appeal from this decision.

2. We have the findings of fact that this, land was duly acquired under the Land Acquisition Act in 1900: that the defendants have been cultivating it since 1924 without any title from the Secretary of State or from the Bengal and North Western Railway as a part of a larger holding occupied under the zamindar of the Dharampur estate, and that they have been recognized as raiyats by the zamindar.

3. Mr. Sri Narayan Sahay on behalf of the appellant argues in the first place that the suit should be regarded as barred by limitation, because the party entitled to sue for recovery of possession is the Bengal and North Western Railway who hold as lessees of the Secretary of State. In para. 2 of the plaint it has been stated that after the acquisition of the land, the Secretary of State for India under the terras of the lease made over the land to the Bengal and North Western Railway Company for the management of the Tirbut State Railway. Mr. Sri Narayan Sahay suggests that by the use of this term the plaintiffs admit that the Bengal and North Western Railway Company are their lessees, but whether the use of the word "lease" for the contract between the Secretary of State and the Company is correct or not, it is clear that the tenant of the Company is, as the learned Subordinate Judge has pointed out, something very different from that of a lessee under the Transfer of Property Act. It is clear from the terms of the contract that the Secretary of State undertakes to obtain land for the Company as the Company shall require it, but only so much as shall be required; and land not utilized for railway purposes is to return to the possession of the Secretary of State. Whatever may have been the declared purpose for the acquisition of the land now in suit, it appears that if the Bengal and North Western Railway Company desire to obtain possession of it, they must ask the Secretary of State to make it over to them and it is the Secretary of State who must sue, if a suit should be necessary, to obtain possession of land which has never actually been under the management of the Company. It is clear throughout the contract that the land, whether utilized for railway purposes or not, remains the property of the Secretary of State and as possession of the land now in suit must be

recovered by the Secretary of State before it can be made over by him to the Railway Company, the learned Subordinate Judge acted correctly in applying Article 149 of Schedule 1, Limitation Act, in deciding the rights of the parties in this case.

4. In the second place it is argued that the defendants cannot be ejected from possession because they are bona fide tenants on the land and so are protected by the provisions of Ch. 5 or of Ch. 6, Bihar Tenancy Act. Mr. Sri Narayan Sahay cites the decision in Binad Lal Pakrashi v. Kalu Pramanik (1893) 20 Cal 708. In that case it was held that where the de facto proprietor of a village had made a settlement under good faith with the cultivating raiyats, the person with a better title who succeeded in ejecting the proprietor did not thereby acquire a right to eject the raiyats with whom the proprietor had in good faith made settlement, because by thus taking settlement from the de facto proprietor, they had acquired the rights of non-occupancy raiyats under Ch. 6, Ben. Ten. Act. In the present case it has been found that the land in suit was duly acquired under the Land Acquisition Act in 1900, that is to say the original raiyat Meghu Gangota had in 1900 made a valid transfer of his rights in this land, willingly or unwillingly, to the Government of India. In the same way the zamindar of Dharampur had made a valid transfer of this land, which had ceased to form part of the Dharampur estate bearing Tauzi No. 1, and had become a new revenue free estate possessed by the Government of India. Meghu Gangota who had before the original transfer possessed a transferable interest, subsequently made a second transfer to Ram Rachhya Singh. If Meghu Gangota at the time of the acquisition by the Government of India had, instead of making a valid transfer, merely made a contract for sale, the subsequent transfer to Ram Rachhya Singh (assuming that it took place within three years of the acquisition) would have been valid only if Ram Rachhya Singh had acquired the holding in good faith for consideration without knowledge of the previous contract. But in the present case the transfer in 1900 had been complete and Meghu Gangota had no interest which he could transfer to Ram Rachhya Singh; so that the question of whether Ram Rachhya Singh knew of the previous transfer or did not know of it does not arise. The zamindar in 1900 had transferred his interest in this land to the Government of India. It has ceased to form part of his estate; and it had become a separate estate by the operation of the Land Acquisition Act and the statutory rules under the Act. The zamindar could not by accepting rent from Meghu Gangota''s transferee restore this area to his estate, or make the transferee a raiyat of any kind in respect of the area which he had alienated in 1900. Ram Rachhya Singh''s transferees are in no better position than Ram Rachhya Singh himself. Ram Rachhya Singh could acquire no title from Meghu Gangota; and his transferees could obtain no title from the son of Rachhya Singh; and the zamindar of Dharampur in 1924 was in the same position with regard to these transferees as that in which he had been when the transfer had been made to Ram Rachhya Singh. For the transfer of the area which lay within his own zamindari he had not, according to the defendants'' case, any power to act

otherwise than to recognize the transferee as an occupancy raiyat; but the fact that he stated in his receipts a larger area than which the transferees occupied in his zamindari, could not bring that larger area back to the zamindari of Dharampur or make the transferees raiyats of the zamindar of Dharampur in the land which lay within the new revenue-free estate. The tenants who obtained the transfer may have been ignorant of the fact that Ram Rachhya Singh had no title to 1.52 acres out of the area which he transferred, and they may have been ignorant of the fact that this area had been removed from the zamindari of Dharampur in 1900; but the question of whether these transferees acted in good or bad faith cannot arise, because neither. Meghu Gangota nor Ram Rachhya Singh, by transferring rights which they did not possess to a person who may have thought that they possessed them, nor the zamindar by purporting to exercise the rights of a zamindar over a portion of his estate which he had alienated, purporting to exercise those rights in favour of somebody who may have believed that the zamindar did possess them, could bring again into existence rights which had been annulled by the land acquisition proceedings in 1900. The case of the defendants may be a hard one, but they are liable to ejectment at the suit of the Secretary of State; and since they resisted the claim to recover possession, they are liable to pay the mesne profits from the date of the institution of the suit. We do not know what notice of suit was given, and in the circumstances the date of institution appears to be the proper date from which mesne profits should be calculated. Government has been negligent in this matter, by allowing the Record of Bights to be published in a form which would be Completely misleading to purchasers from Meghu Gangota, and in waiting so long before enforcing the right to possession acquired by the proceedings of 1900. If the plaintiff had been a private person, suing upon title acquired in 1900, his right to recover possession would have long since been barred by the law of limitation. The defendants may have been trespassers, in the strict sense of the word in which it is used with regard to real property, from the time of their entry on the land; but all the transferees were lulled into security by the inaction of the Government and of the Railway; and mesne profits ought not to be allowed for the period prior to the institution of the suit.

5. I would confirm the decision of the Subordinate Judge and dismiss this appeal with this modification that the mesne profits are to be calculated only from 21st November 1929. In other respects the decree of the Subordinate Judge is confirmed. The respondent will be entitled to half his costs in this appeal. The decree for costs of the Subordinate Judge will remain as it stands.

Dhavle, J.

6. I agree. After the land acquisition of 1900, nothing that the landlord and the tenant could do in co-operation would operate to deprive the Secretary of State of his title to the land acquired except adverse possession, and the period of limitation for suits by the Secretary of State being sixty years under Article 49, Limitation Act, it was quite clear that the suit of the Secretary of State could not

be resisted. Much has been said before us with regard to the principle laid down in Binad Lal Pakrashi v. Kalu Pramanik (1893) 20 Cal 708, but that case is entirely distinguishable. It was not a case where the tenants and the former landlord had, as in the present case, lost their respective titles. That the principle laid down in Binad Lal Pakrashi v. Kalu Pramanik (1893) 20 Cal 708 is not to be extended has been observed in many oases both in this Court and in Calcutta, and the appellant''s contention that though the landlord of the mauza may have sold out the disputed portion of the land by reason of the land acquisition proceedings, he may have continued to receive rent from the tenants in respect of this portion of the land bona fide, does not seem to me to be entitled to any weight whatsoever. Nor is the question one of bona fides at all. It is either a question of title or of nothing.

