

(1965) 07 PAT CK 0008
In the Patna High Court
Case No : A.F.O.D. No. 440 of 1957

Smt. Kanika Haldar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-07-1965

Acts Referred:

Bihar Tenancy Act, 1885 — Section 23A
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Land Acquisition Act, 1894 — Section 11, 16, 17, 17(1), 30

Citation : AIR 1966 Patna 151

Hon'ble Judges : H. Mahapatra, J;G.N. Prasad, J

Bench : Division Bench

Advocate : J.C. Sinha and S. Mustafi, for the Appellant; K.K. Sinha, Nagendra Prasad Singh, Rudra Deva Kumar Sinha and B.D. Singh, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal arises out of a land acquisition Reference case u/s 30 of the Land Acquisition Act. The occupancy tenant of the land which was acquired is the appellant. The ex-landlords, that is, the landlords before the vesting of the estate as well as the State of Bihar are the respondents. A notification u/s 4 and a "declaration u/s 6 of the Land Acquisition Act," 1894, (to be referred to hereafter as the Act) were issued in respect of 3.396 acres with a jama of Rs. 36-4-0 in plot No. 3377 under tauzi No. 2698 in the district of Monghyr. The present tenant appellant filed her claim before the Collector and on the 25th March, 1955, an award was made u/s 11 of the Act determining the amount of compensation. Since there was some dispute about the apportionment of compensation, a reference was made by the Collector u/s 30 of the Act. We have looked to the original reference and found that the name of ex-landlords were not mentioned in that reference. But it appears from Ext. 1, a certified copy of the application which was filed by some of the ex-landlords before the Collector on the 31st of March, 1955, that they had asked notice to be given to all the ex-landlords and for that purpose process fee of Rs. 3 was attached to that petition. Subsequent

to that, on the 3rd of May, 1955, the reference was made by the Collector u/s 30, yet the name of the ex-landlords did not appear in that. One batch of the ex-landlords, that is, the Singhs made an application on the 10th of April, 1957, before "the Court where the reference was pending to be added as parties, and an order was passed by it on the 29th April, 1957, for bringing them on record as parties. A similar application from another set of ex-landlords, the Chaudharis, who had 8 annas interest, was made on the 17th of December, 1956, for the same purpose of being added as parties to the pending reference, but no order was passed on that application till the reference case was disposed of and the decree was drawn up, subsequent to which the notice of the Court was drawn to their previous application, and on the 11th of September, 1958, the decree was amended and they were included in the decree as entitled to receive a portion of the compensation. The State of Bihar was already before the reference Court as the reference appears to have been made at their instance by the Collector.

2. By the judgment passed on the 8th of July, 1957, in a number of reference cases, the particular reference case No. 33 of 1956 out of which the present appeal arises was disposed of. The tenant, Srimati Kanika Haldar, contended before the reference Court that she was entitled to the entire compensation money as awarded by the Collector except the portion that may be payable to the landlords on the basis of capitalisation of the cash rent that was determined u/s 40B of the Bihar Tenancy Act in respect of the rent of the trees standing on the land in question. Admittedly there were 116 trees on this land and a proceeding u/s 40B of the Tenancy Act ended in commuting that rent of trees at Rs. 36-4-0 per year. The land had been described as bhaoli in the settlement papers. The ex-landlords contend that they were entitled in addition to the capitalised amount of the cash rent for the trees, a portion of the total compensation in proportion to what they were entitled to get by way of bhaoli rent from the land. The learned District Judge came to the conclusion that the ex-landlords as well as the tenants were entitled to get the compensation, the former on the capitalised value of the rent that was payable to them for the land which was acquired. In his view the land still continued to be bhaoli and the landlords were entitled to get 9/11th share out of the compensation fixed under the award. It is against this that the tenant has come in appeal. We should also mention here that the learned District Judge also took the view that the land should be deemed to have vested in the Government in August 1954 u/s 17(1) of the Land Acquisition Act, and, therefore, the ex-proprietors and not the State of Bihar were entitled to get the landlords' share out of the compensation. The State of Bihar had preferred an independent appeal out of this judgment, obviously appertaining to their claim to receive a part of the compensation, as First Appeal No. 15 of 1958 on the 2nd of January, 1958, but that was withdrawn on the 23rd of December, 1963. The State entered appearance in pursuance of a notice in the present appeal on the 15th January, 1960.

3. The main point to be considered in this appeal as canvassed by learned counsel for the tenant-appellant is whether the ex-landlords whose estate vested

in August 1954, can be entitled to receive any part of the compensation awarded u/s 11 for acquisition of the occupancy holding, on the 25th March, 1955. After the vesting of the estate, all interest of the ex-proprietors came to an end and the State became entitled to rent. Only such benefits that had been saved by the provisions of the Land Reforms Act could be retained by the proprietors. The right to realise rent came to an end on the vesting of the estate, Therefore, by the date the award was made determining the compensation payable for the land, the ex-proprietors, that is, respondents second party, had ceased to be landlords or proprietors in respect of this land, and as such, they cannot be entitled to receive anything in lieu of future rent. Learned counsel appearing for the respondents, however, urged that the land had vested under the Land Acquisition Act in the Government long prior to the date on which the estate vested, and, therefore, the title to receive compensation as landlords still has to be determined with reference to such date. On the face of it the argument is valid but on scrutiny it has no substance as far as the present case is concerned. Section 16 of the Act provides that after the award is made the Collector can take possession of the land, and it is with effect from that date the possession is taken, the land will vest in the Government. Section 17(1) says that in a case of urgency, whenever the appropriate Government so directs, the Collector may take possession of land even before the award is made, fifteen days after the notice u/s 9 was served. Ext. 3 on which learned counsel very much relied is a letter from the Director of Land Acquisitions, Bihar, dated the 3rd May, 1950, to the Special Land Acquisition Officer, Patna, in which he stated that the Government had been pleased to authorise the Land Acquisition Officer (Collector) u/s 17(1) of the Act to take immediate possession of such portions of the lands as are waste and arable. Assuming that there was such a direction as contemplated u/s 17(1) by the Government, there is nothing to show that in pursuance of such direction the Collector had taken possession of this land before the award was made. The vesting of title of the land in the State Government will follow the taking of such possession either u/s 16 or u/s 17.

Learned Counsel's argument was that before the land acquisition proceedings were started and the notification was made u/s 4 of the Act this land had already been in possession of the military personnel during the last war, and thereafter in the possession of the Eastern Railway. The land acquisition proceedings were commenced at the instance of the railway authorities because it was required for them, inasmuch as they were already in possession there was no need of taking any formal possession by the Collector u/s 17(1) or even u/s 16. This contention has no substance at all. Even the letter on which learned Counsel relied (Ext. 3) clearly shows that the Government wanted to take such possession in spite of the fact that the railway for whom the acquisition was made, was already in possession. In absence of any evidence that the Collector had taken possession u/s 17(1) before the award was made, it cannot be held that the land had vested in the Government before the 25th March, 1955, when the award was made u/s 11 of the Act. It is not necessary to find out if actually, on any date subsequent to

the award possession was taken u/s 16, because such a date will necessarily be much after the vesting of the estate under the Land Reforms Act. Therefore, the irresistible conclusion is that by the time the award was made and before the land vested in the Government under the Land Acquisition Act, the ex-proprietors had lost all their interest in this land after the vesting of their estate in August 1954 in the State Government. In that view, they cannot be entitled to anything out of the compensation.

4. Learned Counsel's further contention was that this question cannot be gone into now in this appeal, because the matter between the ex-landlords and the State of Bihar had already become final inasmuch as the State has not preferred any cross-objection in this appeal challenging the finding of the District Judge that they (the State) were not entitled to receive any part of the compensation in preference to the ex-proprietors. His further contention is that by the withdrawal of the other appeal (F. A. 15 of 1958), the decision in this respect between the ex-proprietors and the State of Bihar had become final and cannot be agitated in this appeal. We cannot accept this contention at all for the simple reason that independent of whether the State of Bihar will be entitled to get in the present case any part of the compensation money or not, we have to find in this appeal whether the ex-proprietors that is, respondent second party, can at all be entitled to get any part of the compensation as held by the Court below. The tenant challenges their right to receive their part of the compensation money. The other objection in regard to the amount that may be payable to the ex-proprietors is a different matter, but if, in law, the ex-proprietors are not entitled to receive any compensation in lieu of rent, bhaoli or cash, then the other question as to what amount at all could be payable to them does not fall to be considered and decided.

5. We are, therefore, clearly of the view that in the present case the estate of the ex-proprietors, respondents second party, having: already vested in the State of Bihar under the Land Reforms Act and all their interests as landlords having come to an end since August 1954, by which time the land in question had not vested in the Government u/s 17 or Section 16 of the Land Acquisition Act, they will not be entitled to any part of the compensation awarded by the Collector in the present case. In that view, the judgment and decree of the learned District Judge must be set aside.

6. The other point, whether the landlords will be entitled to any part of the compensation in lieu of the bhaoli rent in addition to the capitalised amount of the commuted rent of the trees u/s 40B of the Bihar Tenancy Act, was argued at some length by both sides though that is not necessary to be decided in view of the finding that we have already recorded. We shall briefly refer to that. The land was subject to bhaoli rent. In a proceeding: u/s 40B of the Bihar Tenancy Act the Bhaoli rent in respect of the trees was commuted to Rs. 36-4-0 per year. That, however, did not end the right of the landlords to receive bhaoli rent in respect of any other produce from the land that was actually being grown or might be

grown at any time. In a case where any other income by way of bhaoli rent was available to the landlords out of the land, apart from the income from the trees u/s 23A(b) of the Bihar Tenancy Act, that would entitle the landlords to receive a part of the compensation awarded under the Land Acquisition Act. What that amount will be will depend upon the amount of bhaoli income. As the portion of compensation payable in lieu of cash rent to the landlords is determined, so also will be determined the portion of the compensation payable for the bhaoli rent. In the present case there is no evidence to show what was such bhaoli income to the landlords apart from the trees whose bhaoli rent had been commuted to cash. If we would have held that the respondents second party were entitled to any share in the compensation in lieu of rent, then it might have been necessary in the present case to remand it for determination if there was any bhaoli income to the landlords, apart from the rent of the trees already commuted.

7. The learned District Judge was completely in error in holding that even if the landlords would have been entitled for a part of the compensation on account of bhaoli rent, they would have got 9/11th share of the total amount of compensation fixed on the market value of the land. The share by way of bhaoli rent in the produce available to the landlords is 9/20th part of the produce, that is, the landlords will get 9 parts and the tenant will get 11 parts. For that reason it will not be correct to say that the landlords will be entitled to 9 parts out of the land or its value. He is entitled to 9 parts out of the produce. However since we have already held that in the present case respondents second party, the expropriator, will not be entitled to any part of the compensation, all these questions become academic.

8. On behalf of the State of Bihar, learned Additional Standing Counsel contended that they should be held in the present case to be entitled to receive a part of the compensation in lieu of the cash rent that has been fixed u/s 40B of the Bihar Tenancy Act. He did not extend his claim any further on the ground that the land was subject to bhaoli rent other than the trees. But there is more than one difficulty in granting this claim. No cross-objection has been filed by the State in this appeal. No reason is given why such cross-objection challenging the finding against them by the District Judge could not be filed. Secondly, they had brought an appeal independent of the present one to this Court, but they chose to withdraw it. In that view of the matter, we do not consider that in the present case sufficient cause has been made out to invoke our discretionary powers under Rule 33 of Order 41, Civil Procedure Code. The result, therefore, will be that the entire compensation awarded by the Collector will go to the tenant-appellant. The appeal is allowed but in the circumstances of the case there will be no order for costs in this Court. The judgment and decree of the learned District Judge are set aside.