

(1970) 11 PAT CK 0011
In the Patna High Court
Case No : A.F.O.D. No's. 407 and 408 of 1963

Smt. Purni Devi and Others

APPELLANT

Vs

Shibu Mahton and Others

RESPONDENT

Date of Decision : 03-11-1970

Acts Referred:

Evidence Act, 1872 — Section 114
Land Acquisition Act, 1894 — Section 18(1), 54

Citation : AIR 1971 Patna 249

Hon'ble Judges : B.N. Jha, J;B.D. Singh, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and Phinindra Kumar Sinha, for the Appellant; S.K. Mazumdar, (for Nos. 1-5) in No. 407 of 1963 and S.K. Mazumdar, (for No. 1) in No. 408 of 1963, for the Respondent

Final Decision : Allowed

Judgement

B.D. Singh, J.—These appeals are directed against the judgment and decree of the Subordinate Judge of Dhanbad in land acquisition reference cases. First Appeal No. 407 of 1963 arises out of Land Acquisition Reference Case No. 82/57 of 1961/62, which relates to acquisition of 12 decimals of land in survey plot No. 238, bearing khata No. 11, situated in village Barmasla, P. S. Dhanbad, pargana Jharia, in the district of Dhanbad, whereas First Appeal No. 408 of 1963 arises out of Land Acquisition Reference Case No. 81/56 of 1961/62 which relates to acquisition of 41 decimals of land in survey plot Nos. 14/1, 63, 157, 161, 171 and 178, bearing the same khata number, and situated in the same village, for the purpose of construction of foodgrains godown and staff quarters of the Eastern Railway for which declaration was made on the 4th September, 1957. and the same was also published in the Bihar Gazette, dated the 20th of November. 1957. by the State of Bihar. Both these appeals have been heard together and this common judgment will govern them.

2. The Land Acquisition Officer awarded compensation of Rs, 594.09 for

acquisition of 12 decimals of land, and Rs. 3.837 07 for acquisition of 41 decimals of land to Nathuram Poddar. On an objection being raised by Shibu Mahton and others (respondents Nos. 1 to 5) that they were entitled to the entire amount of compensation in both the cases, the Land Acquisition Officer referred the dispute to the District Judge, who transferred it to the learned Subordinate Judge for disposal. Learned Subordinate Judge after considering the evidence as led by the parties, allowed the objection of Shibu Mahton and others, holding that they were entitled to the entire amount of compensation awarded, since Nathuram Poddar had no title over the lands acquired. Being aggrieved, Nathuram Poddar initially filed the present appeals in this court. Subsequently, he died. Therefore, his heirs Purni Devi and others were substituted.

3. Both the appeals were listed for hearing before my learned brother B. N. Jha, J. when Mr. S. K. Mazumdar, learned counsel appearing on behalf of the contesting respondents, raised a preliminary objection on the basis of a Bench decision of this Court that since the valuation of the appeals were below ten thousand rupees, the appeals did not lie to this court u/s 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) against the judgment and decree of the Subordinate Judge passed on reference u/s 30 of the Act. His Lordship, therefore, by order dated the 27th August, 1970, directed both the appeals to be placed before a Division Bench. This is how they came before us.

4. In my opinion, the contention of Mr. Mazumdar cannot be accepted- There is no material on the record to show that the Collector had made reference u/s 30 of the Act: on the contrary, from the record it appears that the reference was made u/s 13 of the Act. In *Dr. G.H. Grant Vs. State of Bihar*, their Lordships of the Supreme Court while dealing with the provisions contained under Sections 18 and 30 of the Act (at page 242) observed that there are two provisions. Sections 10(1) and 30, which invest the Collector with power to refer to the Court a dispute as to apportionment of compensation or as to the persons to whom it is payable. By Sub-section (1) of Section 18 the Collector is enjoined to refer a dispute as to apportionment or title to receive compensation on the application within the time prescribed by sub-section (2) of that section of a person Interested who has not accepted the award. Section 30 authorises the Collector to refer to the Court after compensation is settled u/s 11, any dispute arising as to apportionment of the same or any part thereof or as to the person to whom the same or any part thereof is payable. Thus, in view of the above observation even u/s 18, the Collector is authorised to refer a dispute as to apportionment of compensation or title to receive compensation provided the application is made within the time prescribed in Sub-section (2) of the section. In the instant case, therefore, the dispute regarding the title of the contesting parties was one referred to u/s 18 of the Act. In that view of the matter, the appeal against the judgment and decree passed on the reference made u/s 18 clearly lies to this Court u/s 54 of the Act

5. Mr Rajgarhia, learned counsel for the appellants, then drew our attention to

the proviso to Sub-section (2) of Section 18 which prescribes the period of limitation within which an application of objection is to be filed. It reads as follows:

"Provided that every such application shall be made--

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12. Sub-section (2) or within six months from the date of the Collector's award, -whichever period shall first expire."

He urged that In the instant case the con-testing respondents did not file an objection as required under the above proviso within the prescribed period, but learned counsel was unable to place before us any material on the record to suggest that an objection was filed beyond the pres-cribed period. Therefore, there is no merit in his contention.

6. He then submitted that the learned Subordinate Judge had no juris-diction to decide the dispute as he was not appointed a special judicial officer by the State Government as contemplated u/s 3(d) of the Act. Mr. Mazumdar, however, produced before us the notification dated the 30th of May. 1961, duly published in the Bihar Gazette, stating therein that Shri Kamla Prasad Sinha had been appointed as a special judicial officer to perform the functions of the court as provided u/s 3(d) of the Act. Therefore, this contention also has no lees to stand upon. In my opinion, therefore, it is necessary to examine these appeals on merit.

7. Learned counsel for the appellants submitted that the Court below has erred in appreciating the evidence on record. According to him the appellants were entitled to receive the entire compensation money awarded by the Collector, whereas the contesting respondents Jailed to establish their title and possession over the lands for which the compensation was awarded. He urged that the lands in dispute belonged to Banu Mahton and Dewan Mahton who were in exclusive possession for more than 12 years and their names were recorded in the survey settlement Khatian No. 11 of village Barmasia. Banu died leaving behind his only son Radha Mohan who was in possession over the disputed lands along with his uncle Dewan Mahton. Later, Dewan also died leaving his only son Gobardhan. Thereafter both Radha Mohan and Gobardhan came in possession over the disputed lands. On the 24th of February, 1960, they sold the lands to Nathuram Poddar by a registered sale deed (Exhibit Aa). When the lands were to be acquired, it was Nathuram Poddar who got the notice under the Act and the award was also prepared in his name. On the other hand. Mr. Mazumdar, learned counsel appearing on behalf of the respondents, contended that Radha Mohan and Gobardhan had no right, title and interest to execute the said sale deed. He referred to the objection which was filed on behalf of respondent No. 1 before the

Collector wherein it is alleged that Nathuram Poddar had no right, title and possession over the lands and it was Shibu Mahtori along with his brothers who had been paying rent to the landlords regularly and was possessing the same since a long time.

It is further stated therein that the vendors of Nathuram never cultivated the lands nor they were in possession, nor they had any right, title over the disputed lands. The other objection, petition, dated the 24th October, 1960, which was filed on behalf of respondents Nos. 1 to 5, u/s 18 of the Act also reiterated that Radha Mohan and Gobardhan had no right to sell the lands and it further stated that they had relinquished all their title in favour of the father of Shibu Mahton about 35 years prior to the date of the filing of the objection and had left the village. It is also mentioned that the petitioners were cultivating the lands since they left the village and they were paying the rent. It was by fraud that Nathuram got the lands registered in Ms name against the law.

8. In my judgment, the contesting respondents have failed to establish the story of relinquishment as alleged in the said objection petition referred to above. Reference may be made in this connection to the evidence of Shibu Mahton himself who was examined as A, W. 6. hP stated in cross-examination that it is not a fact that Radha Mahton and Gobardhan Mahton had left the lands to the deponent and his family. He further repudiated to have made any such statement in that objection petition. He also stated that there was no proof to the effect that Gobardhan and Radha left the lands to him. Gobardhan, who was examined as A.W 4, also clearly stated in his evidence that he had not surrendered the lands of Barmasia to anybody. In my view, the very substratum of the case of the respondents disappears and they have failed to establish the story about relinquishment or surrender.

9. The allegation in the objection petition that the sale deed (Exhibit Aa) was against the provision of law is also not tenable. It is true that the disputed lands were covered by the Chotanagpur Tenancy Act. 1908. It is also true that Section 46 of the Chotanagpur Tenancy Act imposes a restriction on transfer of the rights by raivats. but in the present case it is admitted that the disputed lands fall within the municipal area. Chedu Mahton who was examined as A.W. 1 stated in cross-examination that Barmasia is within Dhanbad Municipality. In that view of the matter, the restriction imposed under the Chotanagpur Tenancy Act is not applicable to the present case. Section 1(2) of the said Act clearly provides that it extends to the Chotanagpur Division, except any area of part of an area which is constituted a municipality under the Bihar and Orissa Municipal Act, 1922, or which is within a cantonment. Therefore, clearly, the restriction imposed u/s 46 is not applicable and the sale under Exhibit Aa is a valid sale.

10. Exhibit Sha was filed on behalf of the appellants to show that the award in both the cases was prepared in the name of Nathuram Poddar. In my view, it has been rightly contended on behalf of the appellants that since the award was prepared in the name of Nathuram Poddar, there was heavy onus on the

contesting respondents to establish their title and possession over the disputed lands. That apart. Khatian of village Barmasia which was finally published on the 23rd of January, 1925, was also filed on behalf of the appellants and marked as Exhibit Da. In the khatian the names of Shyam Mahton son of Dibu Mahton, Banu Mahton and Dewan Mahton sons of Guru-charan Mahton residents of village Barmasia find mention. The land measuring 22 decimals in plot No. 238 is shown in occupation of Banu Mahton and Dewan Mahton in equal shares. There is a statutory presumption of correctness of the entries made in the khatian as well as there is a presumption of continuity of possession of Banu Mahton and Dewan Mahton over the disputed lands. Therefore, there was heavy onus on the contesting respondents to rebut those presumptions.

11. Mr. Mazumdar submitted that a large number of rent receipts (Exhibits 1 to 1/ tha) was filed on behalf of the respondents and in those receipts Shyam Mahton is shown as tenant and that, according to him, clearly establishes possession of the disputed lands by the contesting respondents. He drew our attention to paragraph 9 of the judgment of the learned Subordinate Judge wherein reliance was placed on these receipts for holding possession in favour of the respondents. Although these receipts have not been printed in the paper-book, we permitted learned counsel for the respondents to refer to them at the time of hearing. In my opinion in view of the aforesaid entry in the khatian much reliance cannot be placed on these receipts. Learned counsel also submitted that the respondents had perfected their title by adverse possession. In my view, the respondents have not pleaded adverse possession in their objection nor have they been able to establish conclusively either by oral or documentary evidence their possession for more than 12 years over the disputed lands. No other documentary evidence has been referred to by learned counsel for the parties. Therefore, I now propose to deal with the oral evidence led by the parties in order to find out how far their evidence is reliable on the point of title and possession,

12. Firstly, I will deal with the witnesses who were examined on behalf of the respondents. I have already referred to the evidence of some of the witnesses of the respondents while discussing the documentary evidence on record. A.W. 1 is a resident of village Barmasia. He stated in his evidence that his land was also acquired and he knew the parties as well as the disputed lands. When the lands were acquired at that time Kartic Mahton ploughed the disputed lands. Then he corrected himself and said Shibu Mahton ploughed it. Gobar-dhan and Radha Mahton never ploughed all those lands nor did Dewan Mahton and Banu Mahton plough the same. In my view, in the face of the entry in the khatian that plot No. 238 was in occupation of Banu Mahton and Dewan Mahton in equal shares and Banu and Dewan sons of Gurucharan Mahton were residents of Barmasia his evidence on this point cannot be accepted. In cross-examination, the witness further stated that he could not even say the area, boundary and the nature of the disputed lands, He also stated first that he received summons but he corrected himself again and said that he did not receive summons. He went to the place of the lawyer and it was the lawyer who asked him to depose. He

stated that Shibu was not related to him but later admitted that he was his agnate. In view of the above statements, in my opinion, this witness is not worthy of reliance,

13. One Upas Mahton was examined as A.W- 2. He also belongs to village Barmasia- His land was also acquired. He stated that he knew the parties as well as the disputed lands. He also stated that Banu and Dewan Mahton were never in possession of those lands. In my opinion, his evidence also on this point cannot be preferred to that of the entry made in the Khatian. This witness stated in cross-examination that there was no person of the name of Babu Mahton and Dewan Mahton in the village. Obviously that is contrary to what is mentioned in the khatian. He further said that he was related to Shibu as a brother by village relationship. Subsequently he stated that they were gotias. In view of the above statements, no reliance can be placed on the evidence of this witness also.

14. One Gangu Mahton resident of village Barmasia was examined as A.W- 3. In cross-examination, he stated that he could not say as to how much land was in possession of Shibu. He could not even say for how much land the case had been instituted. He could not tell the boundaries also. He admitted that Shibu was his gotia. In my opinion, it is not safe to rely on his evidence.

15. Gobardhan Mahton, who was one of the executants of the sale deed (Exhibit Aa) was examined as A.W. 4. He stated that Dewan, his father, and Banu, his uncle, did not ever live in village Barmasia. It may be noted that this is contrary to what is entered in the Khatian (Exhibit Da). Obviously, this witness was telling a lie. He further stated that Nathu Poddar got the sale deed executed in respect of the land on condition that after the execution Nathu would fight the case and after he had obtained the decree, he would pay the consideration money. In cross-examination, he stated that the said sale deed was executed and registered. It was not a fact that he and Radha Mahton granted receipt in token of having received the consideration money, rather he gave the thumb mark with respect to the purchase of cloth from his shop. He could not say whether Radha Mahton had given his thumb mark or not. Radha was son of Banu and Shibu was son of his uncle. He further stated that he did not file any petition anywhere to the effect that he did not receive consideration money and the thumb mark was obtained for purchase of cloth. In my opinion, his above statement cannot be believed in view of Exhibit Aa which was a duly executed and registered document. He also said that he did not know whether his father and uncle lived at Barmasia. bV making this statement also he has told a lie in view of the entry in the Khatian.

16. Jogi Mahton was examined as A.W. 5. He is also resident of village Barmasia. He came forward to support the case of the respondents as regards their possession over the disputed lands. In cross-examination, he stated that there was no person of the name of Banu and Dewan in his village. Apparently, this witness also is deposing contrary to the entry in the khatian. Besides, this witness has admitted in cross-examination that his land was not near the

disputed lands. In that view of the matter, it will not be safe to place reliance on this witness as well.

17. Shibu Mahton, as mentioned earlier, was examined as A.W. 6. He being one of the respondents and the main contestant his evidence on the point of possession cannot be relied upon as he is highly interested. He also stated in his evidence that Dewan and Banu did not enter into possession of the lands. This also is, obviously, contrary to the entry in the khatian. He seems to have deliberately made an incorrect statement on the point.

18. Now, I turn to consider the oral evidence adduced on behalf of the appellants. Nathuram Poddar was examined as O.W. 1. He has stated about his case in its entirety, but he being one of the main parties, in my opinion, it will not be safe to rely exclusively on his statement on account of his interestedness. Therefore, no useful purpose will be served by dilating upon his evidence. One Kailash Bhagat was examined as O.W. 2. He also belongs to village Barmasia. He stated in his examination-in-chief that he knew the disputed lands. He spoke that prior to acquisition the lands were in occupation of Gobardhan and Radha. Later, they came into the possession of Nathuram Poddar. Shibu and Kartic were never in possession of the disputed lands. Nothing has been brought on record to discredit this witness. He has also stood the test of cross-examination. Besides, his evidence regarding title and possession finds support from the documentary evidence referred to above. The last witness is Phatik Chandra Dutta (O. W. 3). He is the person who scribed the sale deed. He proved the sale deed. Exhibit Aa. He has not made any other statement in his evidence. Therefore, he is merely a formal witness.

19. On consideration of the evidence and the circumstances of the case, it has got to be held that the vendors of Nathuram, predecessor of the appellants had title and possession over the lands acquired at the time of sale, and by the purchase, the predecessor of the appellants acquired good title over the lands and as such they were entitled to the compensation money. Therefore, the award prepared by the Collector was just and proper. The respondents had no title and possession over the lands under acquisition. Therefore, the contesting respondents were not entitled to it. Hence the award prepared by the court below in the name of the respondents cannot be sustained.

20. In the result, the judgment and the award (decree) of the Court below in both the appeals are set aside. The appeals are accordingly allowed with costs.

B.N. Jha, J.

21. I agree.