

(2019) 12 PAT CK 0174

In the Patna High Court

Case No : Letters Patent Appeal No. 1067 Of 2017 In Civil Writ Jurisdiction Case No. 7959 Of 2013

State Of Bihar And Ors

APPELLANT

Vs

Visheshwar Mahto

RESPONDENT

Date of Decision : 06-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Bihar Tenancy Act, 1885 — Section 106

Citation : (2019) 12 PAT CK 0174

Hon'ble Judges : Ashwani Kumar Singh, J; Partha Sarthy, J

Bench : Division Bench

Advocate : Nutan Sahay

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellants.
2. Despite valid service of notice, no one appears on behalf of the respondent.
3. This appeal under Clause 10 of the Letters Patent is directed against the order dated 04.04.2017 passed by the learned Single Judge in CWJC No.7959 of 2013 whereby, the learned Single Judge has directed the appellants to make payment of compensation of land appertaining to old Khata No.58, new Khata No.98, old Khesra No.303, new Khesra No.714, area measuring 4.00 acres at village-Ramdeshi under Rajauli Police Station to the respondent within three months subject to the decision of the competent civil court and if the judgment and decree passed in Title Suit No. 15 of 1992 will be set aside by the appellate court and after attaining the finality of the appellate order, the State shall be at liberty to realize the said amount with interest from the respondent in accordance with law.
4. The respondent had filed writ petition before this Court seeking direction to the appellants to pay compensation for the land in question. He claimed that the

land in question belonged to him which was distributed amongst the persons displaced due to Fulwaria Dam Project several years back without giving any compensation. He claimed that he was an occupancy raiyat of village- Manjhla Bigha, P.S.-Rajauli, District- Nawada. Being treated as a landless person, the land in question was settled with him in the year 1970 under 'Bhoodan Parcha' and a certificate in this regard was issued to him on 26.12.1970. Since then, he came in cultivating possession of the aforesaid land.

5. He claimed that the Chief Engineer, Water Resources Department, Bihar, Patna filed requisition on 02.08.1980 for acquisition of 92.13 acres of land at village- Ramdashi under Rajauli Police Station for rehabilitation of displaced persons due to Fulwaria Dam Project. Accordingly, an acquisition proceeding was initiated by the Special Land Acquisition Officer, Flood Protection Project, Patna. Though the land in question was recorded in his name in Ramdashi Anchal Shrista as tenant and receipts were issued to him against the payment of rent for the land in question, and the Land Acquisition Officer had assured him to pay compensation for his acquired land, but no compensation was paid assuming that the said land was a government land.

6. Being aggrieved, the respondent filed a writ petition before this Court vide CWJC No.6928 of 1990. However, the said writ petition was withdrawn by him in order to take legal recourse before the lower court.

7. Thereafter, the respondent preferred a title suit vide Title Suit No.15 of 1992 before the Sub- Judge-III, Nawada for declaration that he is entitled to get adequate compensation. The said suit was decreed in his favour vide judgment dated 11.09.1998 and it was declared that he is entitled to get adequate compensation with respect to land in question through land acquisition process. After declaration that the respondent is entitled to get compensation in respect of suit land through land acquisition process, he filed representation before the authorities with a prayer to pay compensation. Since no compensation was paid to him, he filed a writ petition vide CWJC No.7959 of 2013 before this Court for a direction upon the appellants to pay compensation.

8. The appellants contested the writ petition filed by the respondent.

9. A counter affidavit was filed on behalf of respondent no. 7 wherein it was pleaded that in Title Suit No.15 of 1992, the respondent Visheshwar Mahto relied on the order passed in his favour by Revenue Officer in Revenue Case No.1085 of 1976 under Section 106 of the Bihar Tenancy Act. On verification of the claim of the respondent, it was found that Visheshwar Mahto's name nowhere figures in the Revenue Case No.1085 of 1976. In fact, Revenue Case No.1085 of 1976 pertains to Sukhdeo Mahto vs. Ramdeo Rai. It was further pleaded that the disputed land has been recorded in Cadastral Survey as 'Gair Majarua Malik' and as 'Anabad Bihar Sarkar' in the Revisional Survey Record of Rights. The order of Revenue Officer in Case No.1085 of 1976 was never acted upon. No Jamabandi was established in the name of respondent nor any receipt had ever been issued

in his name. The claim of respondent that the entry stood modified after the order was passed by the Revenue Officer in Case No.1085 of 1976 was entirely irrelevant with respect to his claim. It was further pleaded that a decree of civil court is perfected only after its execution. The judgement dated 11.09.1998 passed by learned Sub-Judge-III in Title Suit No.15 of 1992 was never executed. Since the entire patch of 92.13 acres was lying vacant, that was why, the then Collector transferred it to the Irrigation Department in 1984. The respondent was not in cultivating possession since the so-called grant of 'Bhoodan parcha in 1970' nor he was in possession in 1984 when the lands were transferred by the Collector to the Irrigation Department nor he was given delivery of possession after the 1998 judgment of the civil court. On the basis of aforesaid pleadings, the respondent claimed that the writ petition was fit to be dismissed.

10. Having heard the parties, the learned Single Judge allowed the writ petition vide impugned judgment dated 04.04.2017 holding therein as under:-

"It is an admitted position that the land in question was acquired but up-till-now compensation has not been paid either to the petitioner or to any other person on the ground that the land is in the name of the State of Bihar. Further admitted position is that when the concerned authority refused to make payment of compensation to the petitioner, petitioner preferred writ petition bearing C.W.J.C. no. 6298 of 1990 before this Hon'ble Court which was disposed of by this Court observing that petitioner may take legal recourse before the lower court and thereafter, petitioner filed Title Suit no. 15 of 1992 before the learned Sub-Judge-III, Nawada, in which the learned Sub-Judge, Nawada, declared that petitioner was entitled for getting compensation. Thereafter, the State preferred appeal against the judgment and decree passed in Title Suit no. 15 of 1992, which is still pending but admittedly there is an order and decree in favour of the petitioner which has not been set aside as yet. The legality and propriety of the judgment and decree passed in Title Suit no. 15 of 1992 shall be decided in the appeal and it is not in the domain of this Court to verify the legality and propriety of the judgment and decree passed in Title Suit no. 15 of 1992. This Court confines itself to the reliefs as sought for in this writ petition. Therefore, taking note of the fact that there is a direction of the civil court for grant of compensation to the petitioner, in my view, the State cannot ignore the direction of the civil court unless the aforesaid direction is set aside or stayed by a higher Court.

On the basis of the aforesaid observation, this writ petition stands disposed of giving direction to The Special Land Acquisition Officer, Flood Protection Project, Patna, (Respondent no. 2) to make payment of compensation of the lands in question to the petitioner within a period of three months from the date of receipt/production of a copy of this order. It is also made clear that the aforesaid payment shall be made subject to the decision of the competent civil court and if the judgment and decree passed in Title Suit no. 15 of 1992 is set aside by the appellate court and after attaining the finality of the appellate order, the State

shall be at liberty to realize the said amount with interest from the petitioner in accordance with law."

11. Challenging the impugned judgment passed by the learned Single Judge, learned counsel appearing for the appellants stated that the learned Single Judge erred in law in holding that it is an admitted position that land was acquired. She submitted that it was specifically pleaded in the counter-affidavit that the land in question is a government land and the Collector, Nawada transferred the said land along with other Government land to the Water Resources Department, Bihar in anticipation of approval of Revenue and Land Reforms Department. Without giving any finding on such pleading, merely because declaration was made by the learned Sub-Judge-III in title suit, the learned Single Judge erroneously gave a finding that the land of the respondent was acquired. She contended that the respondent has obtained the judgment from the court of Sub-Judge by playing fraud upon the court. In Case No.1085 of 1976, the respondent was not even a party. She has further contended that the learned Single Judge ought to have dismissed the writ petition on the sole ground that the respondent never ever filed any execution case before the executing court.

12. Having heard learned counsel for the appellant, we are of the opinion that the order impugned passed by the learned Single Judge cannot be sustained.

13. The learned Single Judge has erroneously given a finding that it is an admitted position that the land in question was acquired. The stand of the State is that the land in question is recorded as 'Anabad Bihar Sakar' and 'Gair Majarua Malik'. The State has preferred appeal against the judgment passed by the learned Sub Judge, which is still pending. The respondent has not even filed any execution case after the judgment and decree was passed in the title suit.

14. Article 226 of the Constitution of India empowers the High Court to issue to any person or authority including the government directions, orders or writs including writ in the nature of mandamus that is to command an inferior court to perform a public or statutory duty. However, a writ petition would not be maintainable when a remedy under the Code of Civil Procedure is available.

15. In *Shalini Shyam Shetty vs. Rajendra Shankar Patil* since reported in (2010) 8 SCC 329, the Supreme Court observed : " However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should

not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority."

16. The Supreme Court further observed : "As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."

17. In view of what has been discussed above as also in view of the ratio laid down by the Supreme Court in *Shalini Shyam Shetty vs. Rajendra Shankar Patil* (Supra), the appeal is allowed. The impugned order dated 04.04.2017 passed in CWJC No.7959 of 2013 is set aside. The writ petition stands dismissed.