

(1960) 03 PAT CK 0010
In the Patna High Court
Case No : A.F.O.D. No. 298 of 1954

State of Bihar

APPELLANT

Vs

Dr. G.H. Grant and Another

RESPONDENT

Date of Decision : 18-03-1960

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 16

Citation : AIR 1960 Patna 382

Hon'ble Judges : V. Ramaswami, C.J;R.K. Choudhary, J;K. Sahai, J

Bench : Full Bench

Advocate : Goernment Pleader, for the Appellant; S.R. Ghosal, for the Respondent

Judgement

Choudhary, J.—This appeal arises out of a land acquisition proceeding, A large area of land, comprised of several plots, appertaining to the Dumka Estate, which belonged to Dr. G. H. Grant, was sought, to be acquired by the Government for an agricultural farm at Dumka. The notification u/s 4 of the Land Acquisition Act (hereinafter to be referred to as the Act) was made on the 30-5-1949, & was published in the Bihar Gazette of 8-6-1949. The declaration, as required by Section 6 of the Act, was made on 17-8-1951, and was published in the Bihar Gazette of 29-8-1951. The Collector made an award, u/s 11 of the Act, on 25-3-1952, and filed the same in his office, as required by Section 12 of the Act. One of the plots under acquisition is plot No. 142, lying in village Phutabandh (Dumka), having an area of 6.26 acres. The compensation for this plot fixed under the award, including the additional compensation amounted to Rs. 575-14-0 half of which has been awarded to the proprietor, Dr. G. H. Grant, and the other half to the members of the Phutabandh Village Community. Both Dr. Grant and the Phutabandh Village Community, being dissatisfied with the amount of compensation awarded by the Collector, made applications u/s 18 of the Act for a reference to the Court for determination of the same.

2. It appears that, on 23-5-1952, the interest of the proprietor, Dr. Grant, vested

in the State of Bihar under the provisions of the Land Reforms Act: The possession of the lands acquired was taken by the Collector on 21-8-1952. The Government Pleader, Dumka then, on 15-10-1952, submitted a report that, since the estate of Dr. Grant vested in the State of Bihar, the compensation payable to Dr. Grant should be paid to the State of Bihar. He, therefore, prayed that this matter also should be referred to the Civil Court for decision u/s 30 of the Act.

3. All the three applications, namely, the two applications u/s 18 of the Act, one made by Dr. G. H. Grant, and the other made by the Phutabandh Village Community, and the third application u/s 30 of the Act made on behalf of the State, were heard together by the learned District Judge of Santal Parganas at Dumka, who, on a consideration of the location and the suitability of the land for homestead purposes, fixed the value at Rs. 70-0-0 per katha, which, on being worked out comes to Rs. 4,231-8-0 per acre as to the apportionment of the compensation money between Dr. Grant and the Phutabandh Village Community, the learned District Judge affirmed the award of the Collector that the same should be payable to them half and half.

With respect to the contention raised on behalf of the State of Bihar that, after the vesting of the estate of Dr. Grant in the State of Bihar, the compensation payable to Dr. Grant should be paid to the State of Bihar, the learned District Judge held that the title to the land acquired vested in the Government on the making of the award by the Collector u/s 11 of the Act, and as on the date of making the award, the State of Bihar was not in the picture, the compensation should be paid to Dr. Grant, and not to the State of Bihar. The State of Bihar being thus aggrieved, has presented this first appeal in this Court.

4. A similar question arose between the same parties with-respect to the same acquisition in regard to certain other plots, and reference were made under Sections 18 and 20 of the Act to the Court for its decision. The District Judge in those cases also took the same view with respect to the vesting of the lands in the Government, as has been taken in the present case, and the State of Bihar filed appeals in this Court, such as First Appeals 401 of 1953, 303 of 1954 and 297 of 1954. First appeals 401 of 1953 and 303 of 1954 were heard by Rai and S. G. Prasad, JJ., who, accepting the contention raised on behalf of the State, held that the determination of the compensation payable and giving of the award by the Collector did not constitute any transference of title from the person owning the land, which remained with him until possession had been taken, and the title to the same vested in the Government only when possession was taken of the land so acquired.

In that view of the matter, it was held in those cases that the State of Bihar was entitled to receive the compensation for the acquisition of the land in question (Vide The State of Bihar Vs. Dr. G.H. Grant and Another,) J. First Appeal 297 of 1954 was heard by Ahmad and Dayal, JJ., who took the same view and, following the above decision of this Court, held that title vested in the Government on possession being taken of the land acquired. The present appeal came up for

hearing before Mishra and Tarkeshwar Nath JJ., before whom it was contended on behalf of Dr. Grant, the respondent, that the decision of this Court reported in 1959 Patna Law Reports was not correct, and it required to be reconsidered. Their Lordships, on hearing the parties, felt doubt about the correctness of the above decision, and referred the following question for consideration by a larger Bench:

"In a proceeding under the Land Acquisition Act, does title to the land pass to the State as soon as award u/s 11 is made and filed u/s 12 or is it deferred till possession is taken u/s 16 of the Act?"

This Bench has, therefore, been constituted for the decision of the above question.

5. It is contended by learned Government Pleader, on behalf of the appellant, the State of Bihar, that under the provisions of the Act, the owner of the land acquired under the Act is divested of his title and the same vests in the Government only when possession thereof is taken from the owner, and, until such possession has been taken, the title remains with the owner. It has been submitted that, in that view of the matter, on the date when possession in this case was taken of the land in question by the Collector, the estate of Dr. Grant had already vested, under the provisions of the Land Reforms Act, in the State of Bihar, and the proprietary title to the plot in question, there fore, vested in it even before the land acquired Tested in the Government.

It is, therefore, contended that the State of Bihar is entitled to receive the compensation money which was payable to Dr. Grant under the award. On the other hand, it has been urged on behalf of the respondent that the title to the land acquired vested in the Government the moment the Collector made the award and filed the same u/s 12 of the Act and, as on the date on which the award was made the estate of Dr. Grant had not vested in the State of Bihar, the compensation for the land acquired was payable to him. In my opinion, the argument put forward on behalf of the State of Bihar is well founded and must be accepted as correct.

6. Section 16 of the Act makes it perfectly clear that the land acquired under the provisions of this Act vests absolutely in the Government on taking possession of the same. That Section runs as follows:

"When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

It has, however, been contended on behalf of the respondents that the expression "vest absolutely in the Government, free from all encumbrances" in the above Section refers only to the avoidance of all encumbrances which will not come to an end unless possession has been taken over by the State. In other words, it is contended that the land acquired vests in the Government, even

before taking possession thereof, on the award being made by the Collector without being free from encumbrances, & the vesting becomes free from all encumbrances only when possession is taken by the Collector. ON the language of the section, however, there is, in my opinion, no scope for such an interpretation. Same expression is used in Sections 17 and 17-A of the Act which deal with special powers in cases of urgency for Union and State purposes, respectively. Sub-section (1) of Section 17 reads as follows:

"In cases of urgency, whenever, the appropriate Government so directs, the Collector, though no such award had been made, may on the expiration of fifteen days from, the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances".

Sub-section (1) of Section 17-A runs as follows:

"In cases of urgency, whenever the State Government so directs, the Collector, though no such award has been made, may, on the expiration, of fifteen days from the publication of the declaration mentioned in Section 6, take possession of any Waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances."

Thus in both these sections the expression used is the same, namely, "vest absolutely in the Government, free from all encumbrances". In cases governed by both these sections it is also clear that the award, as required to be made u/s 11 of the Act, may not have at all been made by the Collector, and even then the land acquired vests absolutely in the Government on mere possession being taken. It cannot be argued that in these cases the expression "vest absolutely in the Government, free from all encumbrances" refers only to the avoidance of all encumbrances. If that be so, then there is no justification to interpret exactly the same expression used in Section 16 to mean to refer to the avoidance of all encumbrances only. The above expression, in my opinion, has been used in all these three sections in one and the same sense.

7. Apart from the above Section 16, there is no other provision in the Act dealing with the vesting of the land acquired in the Government, and to say that the land vests in the Government on making of the award u/s 11 is to read Something in that Section which is not there. The scheme of the Act, read as a whole, also leans in favour of the vesting of the land acquired in the Government only on possession being taken of the same, and not at any earlier stage. It also appears that the fixation of compensation under the award or its payment to the owner of the land has nothing to do with the vesting of title in the land in question.

8. Section 11 provides for an inquiry to be made into the objections, if any, raised pursuant to the notice given u/s 9 of the Act and for making of the award by the Collector. u/s 12, such award is to be filed in the office of the Collector,

and, on such filing, it becomes final and conclusive evidence as between the Collector and the persons interested with regard to the true area and value of the land and the apportionment of the compensation among the persons interested. There is nothing in these sections to persuade me to take the view that the award has any effect on the actual vesting of the land in the Government. It is, therefore, obvious that the making of the award can have no concern whatsoever with divesting of title of the owner and vesting of the same in the Government. Then, Section 16 of the Act, as already observed, provides for taking of possession of the land upon which event it vests absolutely in the Government.

9. That the making of the award and the payment of the compensation have nothing to do with the vesting of title also appears from the provisions of Sections 17 and 17-A of the Act, a reference to which has already been made above. These two sections make it perfectly clear that, on possession being taken of the land acquired, it vests absolutely in the Government, free from all encumbrances, even though there has been no award made by the Collector u/s 11 of the Act.

10. Sections 28 and 34 of the Act also throw light on this point. They deal with the payment of interest to the owner of the land. According to Section 28, such an owner is entitled to get interest on any amount of compensation fixed by the Court in excess of the amount fixed under the award at the rate of six per centum per annum from the date on which the Collector takes possession of the land. Section 34 entitles the owner to get interest on the amount of compensation, if it is not paid or deposited on or before taking possession, at the rate of six per centum per annum from the time of taking of possession by the Collector. It is, therefore, clear that the title of the owner vests in the Government only on taking of possession of land, and it is for this reason that the owner is entitled to get interest from the Collector only from the date of taking of possession, and not before that.

11. In this connection Section 48 of the Act is also important. It provides that, except in certain cases, with which we are not concerned in the present case, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken, and that, on such withdrawal, the owner of the land would be entitled to compensation for the damage suffered by him in consequence of the notice or of any proceedings thereunder. Had the title to the land acquired vested in the Government before the taking of possession thereof, as contended on behalf of the respondent, there could be no question for the Government to withdraw from the acquisition.

Such a withdrawal from acquisition could not have the effect of re-vesting of title to the owner of which he was divested, according to the contention of the respondent, on the making of the award itself. It is important to note that there is no provision in the Act entitling the Government to withdraw from the acquisition of any land of which possession has been taken by it, and the reason is obvious that, the title having vested in the Government on possession being

taken, it could not withdraw, and there could be no question of its withdrawing from the acquisition. But as before taking possession title remains in the owner, the provision has been made for withdrawing from the acquisition.

12. Our attention has been drawn on behalf of the respondent to the provisions of Section 31 of the Act, which provides that, on making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and, if they do not consent to receive it, the Collector shall deposit the amount of compensation in the Court to which a reference u/s 18 would be submitted. It is contended that, the title did not vest on making of the award, the question of receiving compensation and of depositing the same, if the same was not received, could not arise; and since, however, a provision to that effect has been made in the Act, it must have been intended by the framers of the Act that the title vested in the Government on making of the award so far as to entitle the owner of the land to receive the compensation money.

I am unable to agree with this contention. The payment or deposit of the compensation money, as required by Section 31 of the Act, has nothing to do with the question of vesting of title in the Government. Even if the compensation money is not paid or deposited, as required by the above Section, there is no alteration in the situation or the position of the parties, except with regard to the payment of interest, which the Collector has to pay to the owner of the land acquired, not from the date on which the amount should have been made or deposited, as required by that section, but from the date on which the Collector has taken possession of the land. This also strengthens the case of the State Government that title really vests only on taking of possession of the land acquired.

13. On a consideration of the various provisions of the Act, my concluded opinion is that title to the land acquired vests in the Government only when possession of the same is taken by the Government, and not on the making of the award itself. This view gains support from a Bench of the Calcutta High Court in *Nrishinha Charan Nandi Chaudhuri Vs. Nagendra Bala Debee and Another*, In that case, the respondents were owners of a certain tauzi, and were also gantidars of the lands in a village lying within that tauzi. On the 11th of December, 1924, some lands of that village were acquired under the Land Acquisition Act. On 28-3-1925, there was default in payment of the arrears of revenue by the proprietors of the tauzi, and the same was sold and purchased by the appellant on 18-9-1925. Two days before that, that is, on 16-9-1925, the Collector took possession of the tauzi and possession over the rest of the lands acquired was taken by him on 22-12-1925.

The award of the Collector gave to the respondents certain amount of compensation as proprietors of the tauzi, and some further amount of compensation for their gantidari interest. On the 3rd of October, 1925, the appellant applied to the Collector for a reference to be made to the Court praying

that the whole amount of compensation awarded by the Collector was payable to him. The District Judge allowed compensation for the proprietary interest to the appellant and that for the gantidari interest to the respondents. On appeal, the High Court held that the respondents were entitled to proprietary compensation for the lands of which possession was taken by the Collector before the revenue sale, but the compensation for the proprietary interest with respect to the lands of which possession was taken by the Collector after the revenue sale was payable to the appellant. The High Court, therefore, accepted the principle that title to the lands acquired vested in the Government only on taking of possession of the same, otherwise the compensation money could not have been awarded to both the respondents and the appellant according as possession was taken by the Government before or after the revenue sale. The case of (The State of Bihar Vs. Dr. G.H. Grant and Another,), therefore, has, in my opinion, been rightly decided.

14. I would, accordingly answer the question referred to the Full Bench as under:

"In a proceeding under the Land Acquisition Act, title to the land does not pass to the State as soon as award u/s 11 is made and filed u/s 12, but it is deferred till possession is taken u/s 16 of the Act."

15. The case will now be placed before the Division Bench for final disposal.

Ramaswami, C.J.

16. I agree.

Sahai, J.

17. I agree.