
(2010) 07 PAT CK 0154
In the Patna High Court

State of Bihar

APPELLANT

Vs

Nirmala Devi and Others

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 12, 18, 30, 4, 9

Citation : (2010) 07 PAT CK 0154

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The State of Bihar has filed this First Appeal against the Judgment dated 17.11.1978 and the Award following thereupon signed on 28.11.1978 by Sri Aniruddh Prasad Sinha, learned 4th Addl. District Judge, Gaya in Land Acquisition Case No. 35 of 1977/150 of 1976, S.J.I., Nawadah allowing the applicant-respondent's application which was referred to by the Collector u/s 18 of the Land Acquisition Act.

2. According to the applicant-respondent, the original applicant No. 2, Gini Devi, had taken the Scheduled 'A' land in settlement from the ex-land lord prior to vesting of Jamindari and was coming in possession thereof. Within the said Scheduled 'A', land Khata No. 84 was recorded as 'Gair Majrua Malik land which changed its character and became Raiyatti land when she took it in settlement. After vesting the ex-land lord filed return showing her as raiyat of the entire Scheduled 'A' land, her name was mutated in the State Shrista and she continued in possession on payment of rent against the grant of rent receipts.

3. The further case is that the lands was partitioned between applicant No. 1, Nirmala Devi and applicant No. 2 Gini Devi. Applicant No.1 then applied for mutation and she was mutated in mutation case No. 181 of 1972-73 whereby 27.46 acre of lands of Khata No. 84 was recorded in her name which was shown in Scheduled 'A' of the application. Scheduled 'B' also came in possession of

applicant No. 1, Nirmala Devi. Scheduled 'A' land were acquired by the State of Bihar and notification u/s 4(1) of Land Acquisition Act with respect to Scheduled 'A' land was served upon Nirmala Devi. Subsequently, notice u/s 9 and 12(2) of the Land Acquisition Act was also served on her but the award was prepared only with respect to Scheduled 'B' land amounting to Rs. 126.50/-. It was contended that the Land Acquisition Department either arbitrarily shown short measurement of the lands acquired by her or dropped the lands of Khata No. 84 on wrong presumption of the same being recorded as 'Gair Majrui' land and the Land Acquisition Department had arbitrarily assessed low valuation of the land acquired. The value of the lands acquired were not less than Rs. 10,000/- per acre which was prevailing market rate at the time of notification u/s 4(1) of the Land Acquisition Act. Because of acquisition of Scheduled 'A' land, the applicants claimed 5 per cent damage and also claimed Rs. 10,000/- as compensation on the ground of damaging the other lands of the applicants.

4. The said application u/s 18 of the Land Acquisition Act was referred to the Civil Court by the Collector.

5. The Opposite Party-appellant appeared and contended that the award of compensation to Nirmala Devi is adequate and further it was contended that she is not entitled to any compensation for suit plot No. 409 under Khata No. 84 of Scheduled 'A' of the petition.

6. The learned Court below framed two points:

(i) Whether applicant No. 1, Nirmala Devi, is entitled to get compensation in respect of the acquisition of suit plot No. 409 under Khata No. 84 in village Hathochak, P.S. Rajauli, Distt. Nawadah? If so, at what rate? and

(ii) Whether the compensation awarded to applicant No. 1, Nirmala Devi in respect of the acquisition of suit plot No. 403 under Khata No. 70 in village Hathochak P.S. Rajauli, Distt. Nawadah is adequate? If not, what will be the rate?

7. After trial, the learned Court below answered both the points in favour of the applicant-respondents. The learned Court below found that Nirmala Devi is entitled to compensation in respect of the entire lands in question as mentioned in Scheduled 'A' of the petition at the rate of Rs. 8000/- per acre as claimed by her and she is also entitled to a sum of 15 per cent on the aforesaid market value payable as compensation in consideration of the compulsory nature of acquisition and also allowed interest at the rate of 6 per cent from the date of taking possession, i.e., 01.03.1971.

8. The learned G.A.-2, Sri Jha, submitted that the learned Court below has awarded exorbitant rate without considering the prevailing market rate on the date of notification u/s 4(1) Land Acquisition Act. So far Khata No. 84 plot No. 409 is concerned, the learned G.A.-2 submitted that no award was prepared regarding the said plot and, therefore, the matter could not have been decided u/s 18 of the Land Acquisition Act. According to the learned G.A.2, the proper

course was that a reference u/s 30 should have been made by the Collector and then only the Civil Court could have decided the same. On these grounds, the learned G.A.-2 submitted that the impugned Judgment and Award are liable to be set aside.

9. It may be mentioned here that in spite of service of notice, nobody appeared on behalf of the respondent at the time of hearing of this Appeal.

10. In view of above facts and circumstances of the case and the submissions of the learned G.A.2, the following points arises for consideration in this Appeal:

(i) Whether the rate of compensation at the rate of Rs. 8000/- per acre is exorbitant and based on no evidence and whether the learned Court below has rightly awarded the said rate of compensation or not?

(ii) Whether the learned Court below could have allowed the claim of the applicant-respondent regarding Plot No. 409 of Khata No. 84 in a reference u/s 18 of the Land Acquisition Act and whether the impugned Judgment and Award on this point is sustainable in the eye of law.

FINDINGS

11. Point No. (i) and (ii) - The applicant-respondent has examined A.W.1, Laddu Yadav who stated that the price of the land at the relevant time of acquisition was at the rate of Rs. 14,000/- per acre. The nature of the lands acquired are Dhanahr. A.W.3, Devkinandan Kamaliya also stated that price of the land was about 12,000-14,000 per acre at the time of acquisition. A.W.6 Abdul Bani has stated that the lands acquired are in similar nature to that of the lands of Kripashanker Trivedi which was acquired for the same purpose by the State of Bihar. Exhibit-6 is the Judgment regarding the lands of Kripashanker Trivedi. It appears that the lands of same village was acquired for the same purpose and by the Judgment Exhibit-6, the rate of compensation was fixed at Rs. 8000/- per acre. O.P.W.-2, Ram Charitra Mahto, has stated that the said rate was fixed on the basis of sale price of similar nature of the land in the locality.

12. In view of above facts that the nature of the land of the applicant is similar to that of Kripashanker Trivedi and the lands are of same village and acquired for the same purpose the Judgment Exhibit-6 will prevail upon the oral evidence and therefore, I find that the rate of land decided in Exhibit-6 i.e., Rs. 8000/- per acre is acceptable and in my opinion, the learned Court below has rightly relying upon Exhibit-6 has fixed the same rate. I find no reason to interfere with the same.

13. So far area of land is concerned, Exhibit 3/A and Exhibit 3/B issued by the Land Acquisition Department, clearly indicate the area of the land. O.P.W.1, Guru Sahay Singh is Amin of Land Acquisition Department has stated that he has measured the land and the correct area were mentioned in the official record on the basis of which notices were issued. The applicant have mentioned the same area in their application which is fully corroborated by the aforesaid notices

issued by the "Land Acquisition Department. Exhibit-3 is notice u/s 4 of the Land Acquisition Act.

14. The witnesses examined on behalf of the applicant, A.W.1, Laddu Yadav, A.W.2, Hari Pandit and A.W.4, Rameshwar Singh have all deposed that the land in question belonged to Nirmala Devi and she was in possession on the date of acquisition of land by the State of Bihar. A.W.3 is the husband of Nirmala Devi claimant has also supported the claimant's case. The claimants have also filed Exhibit-1 series the rent receipts, the mutation order regarding mutation in the Shristha of State Exhibit 2 regarding suit plot No. 409 in the name of Nirmala Devi. The aforesaid rent receipts Exhibit 1 series relates to the said plot. The notice u/s 4, 9 and 12 of the Land Acquisition Act which are issued by the Land Acquisition Department also mentions plot No. 409. If the State of Bihar was claiming to be the owner of the said land comprised within plot No. 409, no notice under the Land Acquisition Act should have been issued to the claimants. There is no contrary evidence adduced on behalf of the State of Bihar. The Pleader Commissioner, A.W.5 has also supported the area of plot No. 409 which is the area mentioned in Exhibit-3 series issued in the name of Nirmala Devi and it is same as mentioned in the application u/s 18.

15. The learned G.A.2 submitted that since no award was made regarding plot No. 409, the reference u/s 18 of the Land Acquisition Act could not have been made. According to the learned G.A.2, this question could have only been decided on a reference u/s 30 of the Land Acquisition Act. So far this question raised by the learned G.A.2 is concerned, it may be mentioned here that the notices u/s 4, 9 and 12 of the Land Acquisition Act were issued by the authorities under Land Acquisition Act to the claimants, Nirmala Devi wherein Plot No. 409 was mentioned with area.

16. In a decision reported in Sharda Devi Vs. State of Bihar and Another, , the Hon'ble Supreme Court has held that State is not a "persons interested" Government would not acquire the land which already vests in it. A dispute as to pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the Civil Court for determination either u/s 18 or Section 30 of the Land Acquisition Act.

17. In the present case, the claimants have adduced evidence to the effect that prior to vesting the applicants took settlement of the land and at the time of vesting the zamindar filed return in their name and on the basis of that, they were mutated. The mutation order and the rent receipts have been proved and moreover the notice issued under the Land Acquisition Act in the name of the applicant also mentions the plot No. 409. Therefore, the nature of the land changed to Rayyati land and the applicant became Rayyat with respect to the said land. As stated above, there is no contrary evidence adduced by the State of Bihar. So far the objection of the appellant is concerned in the aforesaid decision at paragraph 23, the Hon'ble Supreme Court has held that as follows:

23. The two provisions contemplating power of the Collector to make reference as contained in Section 18 and Section 30 of the Act need a comparative study. u/s 18, the subject-matter of reference can be a dispute as to any one or more of the following : (i) as to the measurement of the land; (ii) as to the amount or the quantum of the compensation; (iii) as to the persons to whom the compensation is payable; (iv) as to the apportionment of the compensation among the persons interested u/s 30, the subject matter of dispute can be : (i) the apportionment of the amount of compensation or any part thereof, (ii) the persons to whom the amount of compensation or any part thereof is payable. Though the expression employed in Section 18 is "the amount of compensation" while the expression employed in Section 30 is "the amount of compensation" or any part thereof, this distinction in legislative drafting is immaterial and insignificant and a dispute as to entitlement or apportionment of part of the compensation would also be covered by Section 18 of the Act on the principle that the whole includes a part too. Thus, at the first blush, it seems that Section 30 overlaps Section 18 in part; but as will be seen shortly hereinafter, it is not so.

18. In view of above principal of law u/s 18 of Land Acquisition Act also the subject matter of reference can be a dispute regarding as to the persons to whom the compensation is payable. The claimants in the present case claimed to be the persons entitled for the compensation. Therefore, I find no force in the objection of the learned G.A.2 that this question cannot be decided in the reference u/s 18 of the Land Acquisition Act. The aforesaid decision of the Hon'ble Supreme Court is clear answer to the submissions of the learned G.A.2 and the matter has already been settled by the aforesaid decision.

19. In view of above discussion, I find that the rate of land at Rs. 8000/- per acre is correct and needs no interference. I also find that in the reference u/s 18 of the Land Acquisition Act, the Court can also decide as to whom the compensation is payable and the learned Court below has rightly decided the same. Therefore, the findings of the learned Court below on these points are hereby confirmed.

20. In the result, I find no merit in this Appeal and accordingly this First Appeal is dismissed. In the facts and circumstances, the parties shall bear their own cost.