

(2020) 10 JH CK 0056
In the Jharkhand High Court
Case No : L. P. A. No. 393 Of 2012

State Of Jharkhand

APPELLANT

Vs

Nasiruddin Ansari & others

RESPONDENT

Date of Decision : 15-10-2020

Acts Referred:

Chota Nagpur Tenancy Act, 1908 — Section 87(1), 87(2)

Citation : (2020) 10 JH CK 0056

Hon'ble Judges : Aparesh Kumar Singh, J; Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : Sachin Kumar, Deepak Kumar Dubey, Indrajit Sinha, Prashant Pallav

Judgement

1. Heard learned counsel for the Appellant-State Mr. Sachin Kumar, learned A.A.G-II, assisted by Mr. Deepak Kumar Dubey A.C, Mr. Indrajit Sinha, learned counsel for respondent no. 1(b) and Mr. Prashant Pallav, learned counsel for intervenor.

2. This appeal arises out of the judgment dated 15th April, 2008 passed in W.P. (C) No. 5595 of 2004 by learned Single Judge, whereunder the learned Single Judge disposed of the writ petition in the following words:

"I have heard the parties and considered the facts and material on record. It is admitted by the respondents that Jamabandi with respect to the land was running in the name of the petitioners' ancestors. It has also an admitted fact that in the recent revisional survey the said land was recorded in the name of the petitioners. The respondents had challenged the said survey entry in the suit filed under Section 87(1) of the C.N.T. Act. The suit was dismissed. The respondents thereafter preferred appeal under Section 87(2) of the C.N.T. Act which was also dismissed. The respondents have admitted that in a tripartite meeting it was assured that after the disposal of the appeal in favour of the petitioner, the amount of compensation shall be paid to the petitioner. Now the appeal has been dismissed but the amount of compensation has not been paid to

the petitioner. Possession of the land has already been taken by the respondents.

In view of the above, this writ petition is disposed of directing the Deputy Commissioner, Dhanbad (respondent No.3) to pay the amount of compensation to the petitioners forthwith, if there is no other legal impediment. The amount of compensation shall be paid to the land owners within a period of six weeks from the date of receipt/production of a copy of this order. If the amount of compensation is not paid within the said period, the same shall carry interest @ 10% per annum in addition to the statutory interest and other admissible statutory amount till the date of final payment.

In view of the above order, no spate order is passed in the aforesaid interlocutory applications. This orders disposes of the writ petition as well as the said interlocutory applications."

3. The present appeal was filed after a delay of 1587 days for condonation of which I.A No. 2876 of 2012 has been filed. The Appellant-State had taken a plea that the matter regarding payment of compensation was enquired by the Deputy Commissioner, Dhanbad in terms of direction of Principal Secretary, Department of Revenue and Land Reforms, Government of Jharkhand. The enquiry report is dated 13th August, 2011. It was stated that it appeared that the writ petitioners had expired prior to passing of the order dated 15th April, 2008. Subsequent to the enquiry, the department sought legal opinion. After obtaining opinion from learned Advocate General, the instant appeal was preferred on 19.09.2012. This entails some delay, which is not deliberate. Appellant pleaded that there are good grounds in the appeal and if the delay is not condoned, the State would suffer irreparable loss and injury. Being concerned with the enormous delay in preferring the appeal, the Coordinate Bench of this Court by order dated 4th September, 2018 read with order dated 1st October, 2018, directed the Chief Secretary to file an affidavit on certain points. Two affidavits were filed by the Chief Secretary, Jharkhand, the first one dated 25th January, 2019 which is rather voluminous and the second one on 15th February, 2019. On merits, State took a plea that (i) learned Single Judge had failed to address on the main prayer of the writ petitioner which sought quashing of an order of Deputy Commissioner, Dhanbad, whereby a long standing Jamabandi in the name of the ancestors of the writ petitioners was cancelled; (ii) without adjudicating on the first prayer, learned Single Judge directed the Deputy Commissioner, Dhanbad to pay the amount of compensation to the petitioners forthwith, if there are no other legal impediments, within a stipulated period with a condition of payment of interest in default apart from statutory interest. This Court after taking note of the two affidavits of the Chief Secretary in its order dated 5 th November, 2019 and after dealing with rival submissions of the parties, felt that considering the nature of the dispute and the quantum of compensation being paid or to be paid by the State, promptitude was required to be shown in preferring the memo of appeal on the part of the concerned officials of the State. It appeared that affidavits filed by the Chief Secretary did not attribute any fault on the part of any of the

officials of the State. The then learned Addl. Advocate General sought time to obtain fresh instruction. Another affidavit of the Chief Secretary has been filed after several adjournments and costs on 7th October, 2020. Affidavit of the Chief Secretary was placed before this Court on the previous date 8th October, 2020. For better appreciation, the order dated 8th October, 2020 is extracted herein below:

"Mr. Rajiv Ranjan, Learned Advocate General, Mr. Sachin Kumar Learned AAG II assisted by learned counsel Mr. Deepak Kumar Dubey are present through Video Conferencing for the appellant State.

Prayer for adjournment on behalf of Mr. Indrajit Sinha, learned counsel representing the respondent no.1 (b) is made on personal ground.

Learned Advocate General has drawn the attention of the Court to the averments made in the supplementary affidavit dated 07.10.2020 filed in compliance of the order dated 11.08.2020 and the orders passed in that regard earlier. Learned Advocate General submits that after due scrutiny of the relevant records relating to the instant land acquisition process, the Chief Secretary, Government of Jharkhand has arrived at an opinion that the delay was neither intentional nor deliberate on the part of any particular officer of the State Government. The chronology of dates and events and the presence of parallel proceeding going on between the State and the writ petitioners in respect of the same piece of land arising out of the Chotanagpur Tenancy Act, 1908 have led to inquiries undertaken at the level of the Deputy Commissioner, Dhanbad and also at the level of the Department of Revenue and Land Reforms, Government of Jharkhand through a seven members committee. It was only after obtaining the opinion of learned Advocate General that the decision to prefer an appeal against the judgment dated 15.04.2008 passed in W.P.(C) No. 5595 of 2004 was taken. The acquisition has been completed and as per the policy decision of the Government 80% of the amount has been paid to the land loser as per the chart at para 6 (xiv) with the stipulation that the land loser will have to pledge the undisputed land of similar value in favour of the Government so that the Government's interest is protected in case pending issue is decided in favour of the Government.

Learned Advocate General submits that the table at para 6(xiv), though does not describe the name of the writ petitioners but this factual position would be made clear if a short time is granted. He further submits that a preliminary inquiry No. 16/15 is being conducted by the Anti Corruption Bureau in relation to the land acquisition for PHED's project in Bhelatand Water Supply, Dhanbad. The Director General, Anti Corruption Bureau has been requested by the Department through letters dated 06.02.2020 and 02.07.2020 to update the present status of the inquiry. It is submitted that required action will be taken in consonance with the inquiry report to be submitted by the Anti- Corruption Bureau. As such, the matter relating to fixing of responsibility on any particular officer for the delay of 1587 days in preferring the instant memo of appeal be put to a quietus and the

delay be condoned in the interest of justice, since important issues of fact and law are involved in the matter. The appeal may be heard on merits.

Having regard to the aforesaid submissions and the request made on behalf of learned counsel for the respondent no.1 (b) Mr. Indrajit Sinha, let the matter appear on 15.10.2020. Learned counsel for the State would apprise the Court about the payment of compensation, if any to the writ petitioners/ contesting respondents/ successor in interest."

4. Today, Mr. Sachin Kumar, learned A.A.G.-II informs on instructions that 80% of the amount of compensation have been paid to the land losers including the writ petitioners or their purchasers. He would be filing a specific affidavit containing the details of the awardees or their assignees, who have received the payment. It is pertinent to mention here that since the land in question is still under litigation in a separate proceeding, as a matter of policy, government has paid 80% of the amount to the land losers as per the chart at para 6(xiv) of the affidavit dated 7th October, 2020 with the stipulation that the land loser will have to pledge the undisputed land of similar value in favour of the Government, so that the Government's interest is protected in case the pending issue is decided in favour of the Government.

5. Mr. Sachin Kumar, learned A.A.G.-II in this background facts has placed reliance on a decision of Supreme Court in the case of Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others reported in (1987) 2 SCC 107 in support of submission that the approach of the Court should be liberal in condoning the delay in order to do substantial justice instead of being guided by technical consideration when the delay is not deliberate.

6. During the course of submissions learned counsel for the State has taken pains to explain that on the one side, the question of payment of compensation to the land losers of a huge amount is involved in the backdrop of a pending parallel proceeding on the question of title, there is no deliberate delay on the part of the Appellant-State in approaching this Court in appeal. The sequence of facts and events narrated in the latest affidavit dated 7th October, 2020 filed by the Chief Secretary would show that the matter was inquired at the level of Deputy Commissioner, Dhanbad and also at the level of Department of Revenue and Land Reforms, Government of Jharkhand through a seven members committee. It was only after obtaining the opinion of learned Advocate General that a decision was taken to prefer an appeal against the judgment dated 15.04.2008. Delay is not attributable to any single official of the Government at any level, but the delay is for systemic reasons since the issue was being inquired thoroughly at the level of the district administration and then at the level of the Department of Revenue and Land Reforms, Government of Jharkhand. The anguish expressed by this Court in its order dated 4th September, 2018 read with order dated 1st October, 2018, has been properly inquired into and explained in detail through the affidavit filed by the Chief Secretary of the State. If the delay is not condoned, interest of the State may

suffer irreparably.

7. Learned counsel for the respondent no. 1(b) Mr. Indrajit Sinha has strongly opposed the prayer. He has placed reliance upon a decision of the Supreme Court in the case of University of Delhi Vs. Union of India and others reported in 2019 SCC OnLine S.C 1634. He submits that there are no different parameters for condonation of delay if the fault is on the part of the State. In the instant case, the delay is much more i.e., 1587 days. By this time, valuable rights of the parties may have also crystalized which should not be allowed to be upset. He submits that one person has not yet got the compensation.

8. We have considered the submissions of learned counsel for the parties and taken note of the pleadings filed on behalf of the State to explain the reasons for the delay in preferring the instant memo of appeal. It appears from the affidavits filed one after the other by the Chief Secretary pursuant to the orders passed by this Court earlier that after passing of the impugned order dated 15th April, 2008, the Deputy Commissioner constituted a committee to enquire into the complaints received from persons with respect to acquisition of land in Mouza Bhelatand (Thana No. 89) for construction of Water Treatment Plant under Dhanbad Water Supply Project. After report of such enquiry committee, the department also set up a committee under the chairmanship of Special Secretary, Department of Revenue and Land Reforms, Government of Jharkhand which examined the report of four men committee and other complaints in the matter and thereafter sought legal opinion from the office of learned Advocate General. It further appears from these affidavits that Second Appeal No. 135/2009 was preferred by the State being aggrieved by dismissal of their appeal being Miscellaneous Appeal No. 77 of 2004 passed by learned District Judge, Dhanbad against dismissal of their C.N.T Suit No. 5181 of 2001 (under provisions of Section 87(1) of the Chhottanagpur Tenancy Act challenging the entry made in favour of the writ petitioners as recorded Raiyat in the survey records). The second appeal preferred before this Court got dismissed for default twice. Civil Miscellaneous Petition is pending for its restoration. In these background circumstances, State considering the nature of the dispute and the quantum of compensation to be paid for such acquisition, chose to prefer this appeal after obtaining opinion of the learned Advocate General. This appears to have entailed the huge delay of 1587 days, though it does not absolve the responsibility of the State officials in approaching the Appellate Court with all promptitude given the limitation period of 30 days in preferring such an intra-court appeal. An enquiry is also being conducted by the Anti Corruption Bureau. However, after anxious consideration of the explanation urged on behalf of the State through the affidavits filed by the Chief Secretary, we deem it proper to condone the delay in the interest of justice, and the issue in controversy can be adjudicated on merits. Accordingly, the instant I.A is allowed, however, with a cost of Rs. 10,000/- to be paid to JHALSA within a period of 3 weeks and receipt thereof be also filed in the Registry within the same time.

9. Learned counsel for the Respondent-Intervener has sought consideration of the prayer made through I.A. No. 9059 of 2018.

10. Let the matter be placed in the week of 9th November, 2020 under the appropriate heading.