

(1977) 07 PAT CK 0015
In the Patna High Court
Case No : A.F.A.D. No. 555 of 1973

The State of Bihar and Others	Vs	APPELLANT
Nemdhari Singh and Others		RESPONDENT

Date of Decision : 08-07-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Land Acquisition Act, 1894 — Section 11, 18
Limitation Act, 1908 — Article 120

Citation : AIR 1978 Patna 14

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Advocate : S.B.N. Singh, Govt. Pleader No. 2 and Guru Sharan Sharma, Jr. Counsel to Govt. Pleader, for the Appellant; Parmeshwar Prasad Sinha and R.C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Jha, J.—Defendants preferred second appeal before this Court.

2. The plaintiffs filed the suit for recovery of Rs. 4,240 as compensation for the acquisition of 53 palm trees and Rs. 1992.80 paise as interest against the defendants. The case of the plaintiffs was that plots Nos. 845, 845/2103, 306, 308 and 296 appertaining to khata Nos. 187, 190 and 265 in village Pabra Tauzi No. 1104, Pargana Bhusadi, Sub-division Begusarai, District Monghyr, were acquired by the State of Bihar under the provisions of the Land Acquisition Act (hereinafter referred to as "the Act"). The State of Bihar paid compensation for acquisition of these plots on 13-4-1960. There were 53 trees standing on these plots. The case of the plaintiffs further was that the defendants had cut these 53 palm trees standing on these plots on 15-4-1955. It is also clear from the certificate given by the Sub-Divisional Officer of Waterways, Manjhaul, dated 15-4-1955 (Ext. 1). Exhibit 1 suggested that in total 53 palm trees were cut off from the above-mentioned plots numbers which belonged to Bindeshwari Prasad

Singh (plaintiff-respondent No. 2 before this Court). It is also clear from Exhibit 2, that the plaintiffs demanded compensation in respect of these 53 palm trees. Exhibit 2 is a complaint written by Bindeshwari Prasad Singh dated 11-1-1960 to the Executive Engineer, Waterways Division, Rosera, In that complaint it is mentioned that he has not been paid compensation in respect of the acquisition of these 53 palm trees. The Sub-divisional Officer, Waterways of Khagaria Division wrote a letter (Ext. 4) to Bindeshwari Prasad Singh on 12-10-1961 stating therein that he had suggested to the Executive Engineer, Waterways, Khagaria to give compensation to him in respect of these palm trees. Before filing the suit, the plaintiffs also gave a notice u/s 80 of the Civil P. C. (Ext, 5) to the State of Bihar through the Collector, Monghyr (defendant-appellant No. 1 before this Court). In the notice it was mentioned that the plaintiffs had received the compensation in respect of the above mentioned plots on 13-4-1960. After serving proper notice on the State of Bihar, the suit was filed on 16th February, 1963.

2-A. Both the courts below have concurrently held that the plaintiffs are entitled to get compensation from the defendant-respondents. In other words, both the courts below decreed the plaintiffs suit.

3. In the present case, learned counsel appearing for the appellants raised only two points:--

1. Whether the suit is maintainable?

2. When the right to sue accrues to the plaintiffs?

4. Both the courts below have concurrently decided these two points against the defendants. In the present case, the admitted position is that no award u/s 11 of the Land Acquisition Act was prepared for granting compensation to the plaintiffs in respect of these 53 palm trees which were standing on plots Nos. 845, 845/2163, 306, 308 and 296. These plots were acquired by the State of Bihar for construction of Rosra Parihara embankment under the provisions of the Land Acquisition Act, These 53 palm trees fell on the alignment of the Rosra Parihara embankment. In para, 9 of the notice u/s 80 of the CPC (Ext 5), it was mentioned that the plaintiffs had been paid the compensation for acquisition of the above-mentioned plots numbers on 13-4-1960. It was also mentioned therein that no payment had been made to the plaintiffs with respect to the 53 palm trees. On these facts it is clear that no award was made by the Land Acquisition Officer u/s 11 of the Act in respect of the acquisition of 53 palm trees which were standing on the above mentioned plots numbers. Hence, these plaintiffs could not have moved the Collector for reference of their case to the Court u/s 18 in respect of the compensation of the 53 palm trees in question. Any person interested can move for a reference u/s 18 of the Act to the Collector in respect of the subject-matter of the award. In view of the fact that 53 palm trees were not the subject-matter of the award, the plaintiffs could not have moved the Collector for referring the matter to the Court. Learned counsel for

the respondents relies on a Division Bench decision of the Calcutta High Court in *Rameswar Singh v. Secy. of State for India* ILR (1907)Cal 4701 In that case it has been held that a suit will lie in the Civil Court in respect of claim for damages, which could not be foreseen at the time of the acquisition proceedings. In that case it has also been held that where a party has not been able to put forward his claim by reason of defects or irregularities in the proceeding or where the claim has been put forward but not adjudged, the jurisdiction of the Civil Court cannot be treated as superseded. Relying on this decision, I hold that the plaintiffs' claim was never adjudged by the Collector in respect of the compensation of 53 palm trees and hence the Civil Court's jurisdiction is not barred. In this circumstance, I hold that the suit of the plaintiffs was maintainable before the Civil Court.

5. The second point for consideration is when the right to sue accrues to the plaintiffs. In the present case, it is conceded by the learned counsel for both the parties that Article 120 of the Limitation Act, 1908 was applicable to the facts of this case. The period of limitation under Article 120 of the Limitation Act, 1908 was six years. The short point for consideration in this appeal is when the right to sue accrued to the plaintiffs. In this connection learned counsel for the respondents relies on the decision of the Division Bench of the Calcutta High Court in *Rameswar Singh's* case ILR(1907) Cal 470 (supra), in that case it has been held that the right to sue accrues either from the date of acquisition of the property or the date when the Collector refused to award any compensation. A Division Bench of the Patna High Court in *Secretary of State for India in Council v. Lodna Colliery Co. Ltd.* ILR (1936) Pat 510 : AIR 1936 Pat 513] also held that under Article 120 the right to sue accrued when the public authority refused to pay compensation. In the present case, the trial court held in paragraph 14 of its judgment that the Collector refused to pay compensation to the plaintiffs on 13-4-1960, and the present suit was filed on 16-2-1963 and hence the suit was within time. The lower appellate court in para. 9 of its judgment held that till 12-10-1961, the plaintiffs' claim regarding compensation was not rejected by the department concerned. In this connection the lower appellate court relied on Exts. 10 and 4. Ext 10 is a letter dated 7-1-1960. It is a letter written by the Additional Land Acquisition Officer, Monghyr, to the Executive Engineer, Waterways Division, Rosera. In that letter the Additional Land Acquisition Officer made an enquiry as to whether the Land Acquisition Department would pay the compensation in respect of the 53 palm trees or not. On the basis of this document, it is clear that till 7-1-1960, the Land Acquisition Officer had not rejected the claim of the plaintiffs in respect of payment of compensation of 53 palm trees. Ext. 4 clearly suggests that the Waterways Department was considering the claim of the plaintiffs in regard to the compensation for these palm trees. It is clear on the basis of the notice u/s 80 of the Civil P. C. (Ext. 5) that the plaintiffs were not paid compensation in respect of the palm trees till 13-4-1960. Hence, the plaintiffs understood that their claim in respect of compensation of the palm trees was refused by the Land Acquisition Officer.

Hence, these plaintiffs filed the suit on 16-2-1963, i. e. within six years from the date when the Collector refused to award any compensation to the plaintiffs.

6. The law may be summarised thus:--

A suit for awarding compensation in respect of the acquisition of land or trees will lie before the Civil Court where the parties have not been able to put forward their claim by reason of the de-facts or irregularities in the proceeding or where the claim has been put forward but not adjudged. In this circumstance, the jurisdiction of the Civil Court cannot be treated as superseded.

To this type of case, Article 120 of the Limitation Act, 1908 would be applicable. The right to sue accrued to the plaintiff on the date of the acquisition of the property or on the date when the Collector refused to award the compensation for the acquired property.

7. In the result, the appeal is dismissed. The parties will bear their own costs of this Court.