

(1959) 01 PAT CK 0004

In the Patna High Court

Case No : A.F.O.D. No's. 401 of 1953 and 303 of 1954

The State of Bihar

APPELLANT

Vs

Dr. G.H. Grant and Another

RESPONDENT

Date of Decision : 05-01-1959

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 16, 18, 3

Citation : AIR 1959 Patna 343

Hon'ble Judges : S.C. Prasad, J;B.N. Rai, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; P.R. Das and S.R. Ghosal, (in No. 303/54) and S. Safdar Imam and S.R. Ghosal, (in No. 104/53), for the Respondent

Final Decision : Allowed

Judgement

S.C. Prasad, J.—These two appeals have been heard together. They arise out of two judgments of the District Judge of Santhal Pargana delivered by him in two references made to him by the Deputy Commissioner of Santhal Parganas u/s 30 of the Land Acquisition Act, 1894, on 5-11-1952 on two petitions filed by the State of Bihar claiming that the amounts of compensation payable to the ex-proprietor of Dumka Estate, under which the lands in question had been situated and had subsequently been acquired by the Government of Bihar in village Phutabandh and Puma Dumka, had become payable to the State of Bihar, because the proprietary interest of Dr. G.H. Grant, the ex-proprietor, had vested in the State of Bihar on 22-5-1952 under the Bihar Land Reforms Act.

2. In one of these cases there was a reference u/s 18 also on the objections raised by the Village Community, but that was not pressed at the time of the hearing and the references have been dealt with by the learned District Judge u/s 30 of the aforesaid Act, and we are concerned in these appeals with that matter only.

3. It appears that the acquired land was taken possession of by the Collector u/s 16 of the Land Acquisition Act on 21-8-1952. The award had been given by him u/s 11 of the said Act on 25-3-1952. The amount was in deposit and had not been withdrawn by Dr. G.H. Grant till 25-5-1952 when his interest as proprietor vested in the State Government, as already stated. The two references were made by the Deputy Commissioner on 5-11-1952 as mentioned above. It appears that on 15-10-1952 the Government Pleader of Dumka had submitted an opinion to the Deputy Commissioner of Santhal Parganas in which he said that as a dispute had arisen between the ex-landlord, Mr. Grant and the State Government regarding the compensation, the dispute should be referred to the Civil Court for decision u/s 30 of the Land Acquisition Act.

It appears that on the basis of this opinion of the Government Pleader, the Deputy Commissioner made the aforesaid references. It further appears that on 10-3-1953 the Additional Collector of Santhal Parganas filed a petition before the District Judge of Santral Parganas alleging that the estate had vested in the State Government on 22-5-1952 under the Bihar Land Reforms Act, by which date the Collector had not taken possession of the land. Therefore, the amount of compensation had become payable to the State Government and not to Mr. Grant.

4. Mr. Grant contested both the references and alleged in both of them that the full amount of compensation for proprietary interest and trees had been awarded to him by the Collector by his award dated 25-3-1952 and the award had been duly filed in the office of the Collector under S, 12 of the Land Acquisition Act. There having been no objection raised by him to receive the compensation, as awarded, the Collector had become legally bound u/s 31 of the Land Acquisition Act to tender and make the payment of the compensation to him, but this had not been done.

It was further alleged that this award had become final and conclusive between the Collector representing the Government and Mr. Grant, and it was he, who was legally entitled to the full compensation for the proprietary interest, as awarded, and the State of Bihar had no right to the same, in spite of the fact that subsequently in May, 1952 the proprietary interest had vested in the State of Bihar. It was also contended that neither the Government nor the Collector could challenge the validity of the award and the claim of Mr. Grant to the compensation for the proprietary interest and that the references u/s 30 of the Land Acquisition Act made by the State Government at that stage were legally untenable and were bad references.

5. The learned District; Judge upheld the objections raised by Mr. Grant and discharged the references holding that Mr. Grant was entitled to the compensation money according to the award and also interest. The State of Bihar has come up in appeal.

6. It has been contended by the learned Government Pleader on behalf of the

State before us that the view taken by the District Judge was erroneous and he was not correct in holding, as he has done in his judgments under appeal, that as between Mr. Grant and the Government, the vesting of the interest of the former was not referred till it was taken possession of u/s 16 of the Land Acquisition Act and that this vesting had commenced as between them from the date of the award and its filing under Sections 11 and 12 of the Act. His contention was that title to the land, acquired under the Land Acquisition Act, cannot vest until possession had been taken actually u/s 16 of the Land Acquisition Act. He referred to this Section 16 and also to Section 48 of the Act in support of his contention.

Reference was made to the general scheme of the Act and its self contained nature and it was said that this Act provided for determination of all disputes in connection with all persons interested in the land in respect of the amount of compensation payable for acquisition of a particular land. He has also pointed out that in certain emergent cases (vide Section 17 of the Act) the Collector was empowered to take immediate possession of the land to be acquired urgently and to the provision of this section to the effect that as soon as the possession was taken, the title of the land would vest in the Government in spite of the fact that by that time the Collector might not have been able to give his award in respect of the amount of compensation and the person to whom the compensation was payable.

He, therefore, laid special stress on the provisions of the Act on the point of the vesting of the estate according to which provisions it depended exclusively and solely on the taking of possession of the land to be acquired, having no reference whatsoever to the determination of the compensation payable and the giving of the award by the Collector, which was merely an act of an offer on behalf of the acquiring authority, namely, the Government or the company, as the case may be, through the Collector, to the person interested in the land in question on the point of the area which was to be acquired and the amount of compensation which was proposed to be paid for acquisition.

That did not, according to him, constitute any transference of title from the person owning the land which remained with him until possession had been taken. He pointed out with reference to Section 48 of the Act, that at any time before possession had been taken the acquisition authority, namely, the Government, could withdraw from the acquisition, the result of which withdrawal would be that the amount of compensation shall not be payable to the person concerned, but that he shall be entitled to certain damages, and that no such withdrawal could be done once the Collector had taken possession of the land in which case the title would at once vest in the Government.

7. He urged, therefore, that it was clear that the taking of possession was the decisive factor in respect of the divesting of the title of the previous owner and its vesting in the Government and if, therefore, in the present cases the Deputy Commissioner had taken possession of the lands in question in August, 1952, it

must be held that if there had been no divesting of the estate of Mr. Grant by reason of the Land Reforms Act in May, 1952, the title must have continued to remain with Mr. Grant till August, 1952 when the Deputy Commissioner had taken possession of these lands.

If before that date of the taking of the possession in August, 1952, Mr. Grant had withdrawn the compensation money deposited by the Deputy Commissioner, that would not have meant change in the title, because title could be lost by the owner only when the Collector took possession of the land. Even after the compensation had been withdrawn, if the lands acquisition proceeding had been dropped and the Government had withdrawn from it, Mr. Grant the owner of the land would have had to refund the amount.

8. As regards the finality of the award u/s 12 of the Land Acquisition Act he contended that that only meant that if no dispute cropped up between the persons claiming the compensation amount and if no reference was made u/s 18 or Section 30 of the Act, the amount of the award shall be payable to the person mentioned thereunder. The finality did not, he said, mean that there could be no dispute decided under this Act in respect of the rights of the person mentioned in the award, inter se, in respect of the payability of the compensation money. The learned Government pleader referred to Section 12 of the Act and urged that the section itself said that the finality shall be subject to other provisions of the Act.

9. Learned counsel on behalf of the respondent Mr. Grant, has urged that the land acquisition proceeding was completed by the making of the award and, therefore, Mr. Grant became entitled to the compensation awarded on 25-2-1952. I think this argument is not correct. The position taken up by the learned Government pleader, which I have mentioned above, appears to me to be sound and well founded.

10. Section 12 of the Act says that the award given by the Collector will be filed in his office and will, "except as hereinafter provided", be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the lands, and the apportionment of the compensation among the persons interested. The definition of "person interested in the land", according to this Act is not exhaustive. What it really means is that it includes any person claiming interest in the amount of compensation whether it be a valid claim or not. The Collector is bound to treat every person who claims compensation as an interested person. He should include him in the award u/s 11, even though he may award him nothing.

The Collector is not competent to decide the validity of the claim. For that purpose if any person interested, who has not accepted the award, may apply to the Collector within the prescribed period u/s 18 of the Act praying that the matter be referred by the Collector for the determination of the Court, if his objection is to the measurement of the land or the amount of compensation or

the person to whom it is payable or the apportionment of the compensation among the persons interested, and the finality of the award u/s 12 of the Act is subject to the decision by that Court u/s 18 of the Act. Section 30 of the Act also deals with a reference made by the Collector to the Court and is as follows :

"When the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court".

The finality u/s 12 of the Act must also be subject to the decision made by the Court on a reference under this section. This section gives discretion to the Collector to make reference of his own motion at any time, provided the dispute raised before him includes a person to whom a compensation or any part thereof is payable. It seems to me clear, therefore, that where the Collector has made an award u/s 11 of the Act and before payment has been made, if a new person, not previously appearing before him, appears, he can make a reference to the Court for the determination of that claim, and the Court, to which this reference is made, will be competent to decide the question between them. There is nothing in Section 30 to limit it to the disputes between the persons inter se to whom the compensation is payable and who are mentioned in the award of the Collector.

The clear object of this section appears to me to be to make some provision for decision of complicated matters where the Collector experiences difficulty in apportioning the compensation. Having regard to the whole scheme of the Act and especially to the definition of the person interested in the land as given in this Act, there does not seem to be any justification for the argument that no reference u/s 30 can be made by the Collector if a dispute is raised by any person other than those who have been mentioned as persons interested in the award of the Collector. If this view is taken, then those persons, who would be really entitled to compensation amount by reason of subsequent transfers either voluntary or involuntary after the award and before the title had vested in the State u/s 16 of the Act, would be deprived of their rights, to get the compensation, and will be driven to ordinary suits in common law Courts of the Land Acquisition Act.

I do not think that this eventually is consistent with the scheme and object of the Act and its nature. In the case of *Promotha Nath Mitra v. Rakhal Das Addy* 11 Cal LJ 420, a purchaser at a revenue sale was held to be entitled to be made a party to the land acquisition case (see also the case of *Jatindra Nath Roy Chowdhury and Others Vs. Narayan Das Khetry*, , which throws some light on this point). If, therefore, the proprietary interest of Mr. Grant had vested in the Government in May, 1952 after the award and before the payment of the money to Mr. Grant, it must follow that the title to receive the compensation as proprietor of the land had been lost by Mr. Grant.

11. Learned counsel for Mr. Grant next urged, citing the cases of Imdad Ali Khan v. Collector of Farrukhabad ILR 7 All 817 : Crown Brewery, Mussoorie v. Collector of Dehra Dun ILR 39 All 339 : Prabal Chandra v. Peary Mohun 12 Cal WN 987 & Indumati Debi Vs. Tulsi Thahurani and Others, , that Govt., could not be held to be a person interested in the land, that it could not be made a party to any reference and that no reference could be made at the instance of the Government, especially when Government was not a party to the proceeding when it had been initially started and when the award had been given. I do not find any substance in these contentions. The two earlier Allahabad cases appear to have been dissented from by the same High Court in the case of Makhan Lal and Others Vs. Secy. of State .

In this case, the objector claimed interest in the land itself as being the owner thereof or at any rate permanent lessee and the Government, on the other hand, asserted that the land was Government property and that the claimant was a mere tenant at will. It was observed that the Land Acquisition Act provided a complete scheme and machinery for the determination of all questions of title and of the amount of compensation that was to arise in the proceeding and, therefore, it was competent to the Court acting under this Act to decide any question of title even though such a question might arise between a private party on the one hand and the Government on the other. If I may say so with respect, this View is correct.

12. The two Calcutta cases are really on different points, namely, whether a person can be added a party to a proceeding after the reference has been made to the Court. It was held in Indumati Debi Vs. Tulsi Thahurani and Others, following the earlier case reported in 12 Cal WN 987, that persons claiming a share in the compensation money who were not parties to the proceeding before the Collector could not be made parties to the apportionment case, because on a reference u/s SO of the Act the jurisdiction of the Court was confined expressly to the dispute referred to it by the Collector. I do not think, this case goes against the appellant here because in the reference in question the Collector had expressly referred the disputes between the appellant and the respondent to the District Judge of Santhal Perganas for decision. Here there is no question of adding the State as a party to the proceeding by the District Judge. These two Calcutta cases have, therefore, no real bearing on the matter to be decided in the case.

13. The last argument of learned counsel for Mr. Grant was on the basis of Section 31 of the Land Acquisition Act that this section provided that the Collector shall tender and make payment of the compensation awarded by Mm to the persons interested, entitled thereto according to the award, and shall also pay, the amount of them unless prevented by some one or more of the contingencies mentioned in the next sub-section, one of the contingencies being that if there was any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the

compensation in Court to which a reference u/s 18 would be submitted. There are three provisos to this sub-section, one of them being that no person, who has received the amount otherwise than under protest, shall be entitled to make any application u/s 18, the second one being that nothing contained in this section shall affect the liability of any person who may receive the whole or part of compensation awarded under the Act to pay the same to the person lawfully entitled, thereto. We are concerned with the third proviso.

14. It is clear to me that this section cannot at all stand in the way of reference, which the Collector might like to make to the Court for determination of disputes u/s 30 of the Act, even if such disputes are raised, after the award by him, by a person, who was not shown in that award as one of the persons interested in the land, provided the Collector had not taken possession of that land u/s 10 of the Act before the date on which the new claimant contends to have acquired title to the land sought to be acquisitioned.

15. I find that the contentions of the learned Government Pleader for the appellant are well-founded and the learned District Judge's judgments cannot be upheld. The appeals are allowed and the judgments passed by the Court below are set aside.

It is declared that the amounts of compensation which are in dispute, shall be paid to the appellant. The appellant shall get costs of these appeals. There shall be one set of pleader's fee, which is assessed at Rs. 100/-.

Rai, J.

16. I agree.