

(1972) 09 PAT CK 0005
In the Patna High Court
Case No : A.F.O.D. No's. 306 and 307 of 1963

The State of Bihar

APPELLANT

Vs

Smt. Banarsi Devi and Others

RESPONDENT

Date of Decision : 27-09-1972

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 30

Citation : AIR 1973 Patna 146 : (1972) 5 PLJR 590

Hon'ble Judges : Shiveshwar Prasad Sinha, J;Shambhu Prasad Singh, J

Bench : Division Bench

Advocate : S.K. Jha, in F.A. 306 of 1963 and T.K. Jha, in F.A. 307 of 1963, for the Appellant; S.C. Ghose and H.R. Das, for the Respondent

Final Decision : Allowed

Judgement

Shambhu Prasad Singh, J.—These two appeals by the State of Bihar are against the awards of the Land Acquisition Judge on references u/s 30 of the Land Acquisition Act (hereinafter referred to as "the Act"). First Appeal No. 306 of 1963 arises out of Reference Case No. 124 of 1961 and First Appeal No. 307 of 1963 out of Reference Case No. 37 of 1960. The sole respondent of First Appeal No. 306 of 1963 died during the pendency of the appeal in this Court and his heirs have been substituted in his place.

2. Plot No. 583/3 of Khata No. 45 of village Bishunpur in the district of Dhanbad along with other plots of the same village was acquired by the appellant for construction of an engineering school which later on came to be known as Dhanbad Polytechnic. The notification u/s 4 of the Act was made on 18th of November, 1957 and published in the State Gazette on 18th of December, 1957. The declaration u/s 6 of the Act was issued on 8th of September, 1958 and published in the State Gazette on 1st of October, 1958. Possession was taken on 30th of October, 1958. Srinivas Ganeriwalla, the original sole respondent of First Appeal No. 306 of 1963, claimed before the Collector that he was entitled to the entire compensation of the said plot. Respondents 1 to 3 of First Appeal No. 307

of 1963 also claimed that they were entitled to the entire compensation for the said plot. On the other hand, the case of the State was that neither of these two claimants was entitled to the compensation for the plot as the plot, on the vesting of the Jharia Raj under the Bihar Land Reforms Act, had vested in the State. The Collector held that Srinivas Ganeriwalla was entitled to entire compensation. Two applications were filed before him, one by respondents 1 to 3 of First Appeal No. 307 of 1963 and another by the appellant for reference of the matter to the civil Court. He made references on both these applications. The reference on the application of respondents 1 to 3 of First Appeal No. 307 of 1963 was numbered in the court below as case No. 37 of 1960 and the reference on the application of the appellant was numbered as case No. 124 of 1961. The court below has held that neither Srinivas Ganeriwalla, nor the appellant, was entitled to compensation. In its opinion, respondents 1 to 3 of First Appeal No. 307 of 1963 were entitled to the compensation. It may be stated that an appeal was also filed by Srinivas Ganeriwalla but that stands dismissed for non-prosecution.

3. The case of Srinivas Ganeriwalla was that he took portions of plot No. 583, i.e., portion other than plot No. 583/3, from the Jharia Raj along with some other lands by a registered deed of the year 1944 and at that time this land was in possession of Himalayan Engineering Company which had a brick-kiln thereon. The company gave up possession of the land in the year 1945 and thereupon Srinivas Ganeriwalla took possession thereof as a trespasser, erected boundary wall around this land as well as the remaining portion of plot No. 583 which had been settled with him and converted part of it into paddy land. Thus, he claimed to have acquired title over this plot, i.e., 583, by adverse possession before the acquisition. The case of respondents 1 to 3 of first Appeal No. 307 of 1963 was that Navin Gope, father of respondent No. 1, Ramoo Gope, took settlement of this plot from the Receiver of the Jharia Raj in the year 1928 by registered patta. He remained in possession of this land till his death and after his death, the aforesaid respondents came in possession thereof and remained in possession till the date of taking over possession by the State. The case of the appellant was that the settlement with Navin Gope was only for a period of five years on the understanding that the land would be converted into paddy land. Navin Gope failed to convert the land into paddy land. Therefore, the land reverted to Jharia Raj. Thereafter it remained in possession of the Raj as Parti land until the estate vested in the State under the Land Reforms Act in 1951.

4. In view of the dismissal of the appeal filed by Srinivas Ganeriwalla, the main question which remains to be decided in these appeals is whether respondents 1 to 3 of First Appeal No. 307 of 1963 had acquired title to and were in possession of the plot at the time of the acquisition and, therefore, are entitled to compensation, of the plot had vested in the appellant and it was entitled to compensation thereof.

5. Before taking up the question, whether respondents 1 to 3 of First Appeal No.

307 of 1963 (hereinafter referred to in this judgment as "the respondents") had acquired title to and were in possession of the plot at the time of the acquisition, I would like to take up for consideration two contentions of their learned counsel, namely, (i) whether the reference at the instance of the appellant was competent specially u/s 30 of the Act, and (ii) whether it was barred by limitation. The answer to the second question, whether the reference was barred by limitation or not, depends on the answer to the first question as to the competency of the reference at the instance of the appellant u/s 30 of the Act. It was not disputed by learned counsel for the respondents that if the reference was u/s 30 of the Act, no question of limitation would arise. He challenged the competency of the reference on two grounds: firstly, that the appellant was not at all a person interested in the compensation and, therefore, no reference could be made at his instance, and secondly, that as the appellant had notice of the proceeding before the Collector before the award was made, reference, if any, at his instance could be made only u/s 18 of the Act and not u/s 30 of the Act. The expression "person interested" has been defined in Section 3 of the Act to include all persons claiming an interest in compensation to be made on account of acquisition of land under the Act. The definition further says that a person shall be deemed to be interested in land if he is interested in the easement affecting the land. It was submitted by learned counsel for the respondents that the appellant being itself the acquirer could not be a person interested for if the land under acquisition would have belonged to it, it would not have issued a notification for its acquisition. All acquisitions are made by the Collector for the State or at least in the name of the State, but in spite of this fact it is now well settled that in appropriate cases the Government may get compensation and a reference may be made at its instance. Reference in this connection may be made to a Bench decision of this Court in *The State of Bihar Vs. Dr. G.H. Grant and Another*, and the decision of the Supreme Court in *Dr. G.H. Grant Vs. State of Bihar*, . The decision of the Supreme Court is on an appeal from the aforesaid judgment of this Court. It has been held in these decisions that a reference could be made at the instance of the State of Bihar. In that case, the award by the Collector was made and filed u/s 12 of the Act on 25th of March, 1952. On 5th of May, 1952, G, the landlord of the land, applied u/s 18 to the Collector for determination by the court of the amount of compensation. On 22nd of May, 1952, the estate of G vested in the State of Bihar under the Bihar Land Reforms Act. On 15th of October, 1952, the Government pleader filed an application before the Collector for reference to the court u/s 30 of the Act. It was contended by learned counsel for the respondents that the decisions in that case of this court as well as of the Supreme Court are distinguishable on account of the fact that the Government had no interest in the land before the award. In my opinion, when the Government came to have interest in the land, whether before the award or after the award, is not material. If the State of Bihar, though acquirer in that case, could make a petition for reference and reference on such a petition was competent, then, in the instant case also, a reference at its instance is competent. The test will be whether the State of Bihar, namely, the

appellant before us, is entitled to the whole or any part of the compensation or not. If it is entitled to the whole or any part of the compensation, then it is a person interested for the purposes of the Act. The Government servant exercising the powers of the Collector under the Act cannot be held to represent the Government as owner of the sixteen annas interest or any interest in the land. He performs his duties under the Act not as a representative of the Government as owner of any interest in land under acquisition. In my opinion, therefore, the Additional Collector of Dhanbad representing the appellant could make an application for reference to the court.

6. The next question which arises for decision in connection with the competency of the reference is whether the reference on the petition of the Additional Collector, Dhanbad, could be made u/s 18 or u/s 30 of the Act. If it is found that the appellant was present in the proceeding through a representative or a notice was served on it under Sub-section (2) of Section 12 of the Act, then the reference could be only u/s 18 of the Act, but if the appellant had not appeared in the acquisition proceeding before the Collector and was not served with a notice of the filing of the award, it might raise a dispute as to apportionment or as to the persons to whom it was payable and apply to the court for a reference u/s 30 for determination of its right to compensation which might have existed before the award or which may have devolved upon it since the award. It was so held expressly in the aforesaid case of Dr. G.H. Grant Vs. State of Bihar, by the Supreme Court and also by a Bench decision of this court in State of Bihar v. Anil Kumar Sen 1970 BLJR 566. In the letter, Ext. E, from the Additional Collector, Dhanbad, to the Land Acquisition Officer, Dhanbad, dated 3rd of October, 1969, it is stated--

"As I had no notice of the aforesaid acquisition previously and as no notice was served upon the State in respect of the acquisition of the aforesaid plot, no claim could be preferred earlier."

It was this letter which was treated as a petition for reference and eventually a reference was made. No case on behalf of either of the two claimants was made out before the Collector or before the court below that the Additional Collector or anybody else representing the appellant an owner of the land in question was present or represented before the Land Acquisition Collector at the time of the making of the award or that any notice was issued to any such person in accordance with Sub-section (2) of Section 12 of the Act. While dealing with the question of limitation, the court below has made the following observation--

"Now, in the present case, neither the Additional Collector on whose application the reference was made nor anybody representing the department in charge of the Zamindari interest of Jharia Raj which has vested in the State of Bihar is alleged to have been present or represented before the Land Acquisition Collector at the time of the making of the award and there is also no allegation that any notice was issued to any such person in accordance with subsection (2) of Section 12."

Nothing on the record has been brought to our notice to show that the aforesaid observation of the court below is incorrect. As observed earlier, the Land Acquisition Officer, acting as Collector for the purposes of the Act, could not have represented the appellant qua owner of the land. The Collector under the Act functions as quasi-judicial authority and he himself cannot represent the State qua owner. In the circumstances, the Additional Collector, Dhanbad, representing the appellant qua owner could validly make an application for reference u/s 30 of the Act and reference by the Collector on his petition was competent. Learned counsel for the respondents wanted to place reliance on the decision of this court in the case of 1970 BLJR 566, referred to above, but in that case, the reference was not held to be one u/s 30 of the Act, because it was conceded that the State of Bihar had indeed been present throughout in the land acquisition proceeding before the Collector.

7. The reference at the instance of the appellant having been held to be one u/s 30 of the Act, there could be no question of limitation. It is obvious from the fact that while Section 18 of the Act prescribes period for making an application for reference under that section, no such period is prescribed for references u/s 30 of the Act. It was also so held by the Supreme Court in *Dr. G.H. Grant Vs. State of Bihar*, , already referred to above. Even if the reference would have been one u/s 18 of the Act, the appellant not being present in the proceedings and not being served with a notice under Sub-section (2) of Section 12 of the Act, the application for reference was in time on the authority of the decision of the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, , and as found by the court below.

8. In recording a finding in favour of the respondents as to title and possession, the court below, it appears, was greatly influenced by the rent receipts produced by them, but, for the reasons stated below, it is not possible to place any reliance on the rent receipts, Exts. 1 series. These rent receipts have not been printed in the paper book, but, for the ends of justice, we allowed learned counsel for both the parties to refer to them in original. As it appears from Ext. H, order sheet of the mutation case before the Circle Officer, at first Raghu-nath Gope, a cousin of Ramoo Gope, respondent No. 1 in First Appeal No. 307 of 1963, made an application for mutation as heir of Navin Mahto. He filed a rent receipt purported to have been granted by Jharia Raj which was dated 31st of March, 1358 B.S.. was numbered 449 and showed payment of Rs. 12/9/- as rent including cess at the rate of Rs. 3/- per year for 1355 B.S. to 1358 B.S. This application was made in October, 1952. Then Ramoo, respondent No. 1 himself, filed an application for mutation of his name. This is dated 15th of February, 1954 and has been marked Ext. 4. In this petition also reference was made to only one rent receipt No. 449 issued for the years 1355 B.S. to 1358 B.S. Ramoo filed another application dated 24th of November, 1954 which has been marked Ext. 5. In this he referred to three rent receipts one of them being the same which was numbered as 449. In the court below, six rent receipts were filed on behalf of the respondents, one of them Ext. 1 (f) is from the State of Bihar which

was obtained some months after the respondents had filed their petition for reference. The case of the appellant was that this rent receipt was obtained by bringing in collusion the Tahsildar of the appellant. The court below has accepted that case and has not placed any reliance on this receipt. I agree with the view taken by that court. The other six rent receipts are from the Jharia Raj. It is remarkable that none of them bears No. 449, the receipt which was produced before the Circle Officer by Raghunath and referred to by Ramoo in his two petitions, Exts. 4 and 5. As stated earlier, that rent receipt was in respect of four years. No rent receipt, among the receipts filed, is for four years. Then the rent receipt Ext. 1 bears both English and Bengali dates. The English date mentioned thereon is 6th of April, 1952 and the Bengali date is 26th of Chaitra 1356 B.S. 6th of April, 1952 corresponds to 24th of Chaitra 1358 B.S. Had there been only a mistake of the year, it could have been argued that the year 1356 was written by mistake for 1358, but the discrepancy in the date itself, 26th for 24th, obviously shows that this receipt is a forged document. In the circumstances, I am of the opinion that all these rent receipts, Exts. 1 to 1 (e), appear to have been brought into existence in collusion with the Amlas of Jharia Raj and manufactured for the purposes of the case. No reliance can be placed on such receipts. There is another circumstance against these receipts. In the patta, Ext. 2, by which the Receiver of the Jharia Raj settled the land under acquisition with Navin, father of Ramoo, it was stated that rent for the five years, the period for which the patta was executed, was to be realised at the rate of Rs. 3/- per year. The lessee was expected to make the land culturable within that period and after the expiry of that period, on the land being made culturable, the annual rent was to be realised at the rate of Rs. 3/- per bigha in case of Bahal land, Rs. 2/8/- per bigha in case of Kanali land and Rs. 2/- per bigha in case of Baid land. The case of the respondents is that Navin Gope did make the land culturable. The land under acquisition 1 acre in area was equivalent to 3 bighas as is apparent from Ext. 2 itself. The Jharia Raj, therefore, was not expected to accept rent at the rate of Rs. 1/- per bigha as evidenced by the rent receipts after the expiry of five years, the period of the lease. This fact not only throws doubt on the genuineness of the rent receipts, but also on the case of the respondents about their possession and making the land culturable.

9. Reliance was also placed by learned counsel for the respondents on Ext. 7, an entry in Register II, Tenant's Ledger of the estate showing that in the year 1956-57, three bighas of land in the said village Bishunpur was entered in the name of Navin Mahto. (Same person as Navin Gope). It is also noted at the top of the said exhibit--"Raja ka Dalil Esake pas Hai". meaning thereby that the tenant had With him documents from the Raja in his favour and, therefore, the entry was made. This entry was made in the year 1956-57 and the dispute for mutation between the heirs of Navin and Srinivas Ganeriwalla was going on from 1952. By that time, as it appears from Exts. H, 4 and 5, the respondents had got some rent receipts manufactured. Perhaps they got the entry made on the basis of Ext. 2 and those rent receipts which, as held earlier, are not genuine. Learned

counsel for the respondents submitted that the entry must have been made on the basis of the return submitted by the Jharia Raj. That return has not been called for and exhibited in the case. Even if the entry was made on the basis of the return of the Raj, it is quite likely that the respondents by bringing the Amlas of the Raj in collusion got their names mentioned in the return. After the rent receipts have been held to be not genuine, a finding cannot be recorded in their favour on the basis of Ext. 7.

10. Three witnesses were examined on behalf of the respondents. A.W. 1 is Ramoo Gope himself. According to him, after taking the settlement, his father Navin got the land levelled and made small Kiaris therein. They used to produce maize, brinjals and vegetables in that land. He has admitted that they did not get another settlement from the Raj of the land after the expiry of five years. According to the terms of Ext. 2, they were required to take a fresh settlement on the expiry of five years. A.W. 4, Nakul Mahto, in his examination-in-chief has stated that before the acquisition the land was in possession of Navin and after his death, in possession of his son Ramoo and sons of Ramoo. According to him also, the respondents used to raise maize, brinjals and vegetables on the land. A.W. 5, Gopal, in his examination has stated about the possession of Navin and the respondents before the acquisition, but according to him, they used to produce maize and kurthi. He does not speak about raising of brinjals and vegetables, whereas the other two witnesses, referred to above, do not speak of kurthi. On the other hand, Sk. Sher Ali, a witness examined on behalf of the appellant, has stated that when he measured the land under acquisition in the year 1959, he found it parti. Raghunath who had made an application before the Circle Officer for mutation of his name in respect of this land as heir of Navin was also examined as a witness in this case. He, in his evidence, has admitted that for some time the land under acquisition was in possession of Himalayan Engineering Company and they had their brick-kiln over it. He has also stated that it is not a fact that since after the death of Navin, the land has always been in possession of Ramoo. Mathura Chaube, another witness examined in the case, an employee of the Jharia Raj, has also stated about the possession of Himalayan Engineering Company over the land under acquisition for some time. The oral evidence led on behalf of the respondents, in my opinion, does not prove their possession over the land at the time of the acquisition.

11. As stated earlier, Ext. 2, was only for a period of five years and one of the terms was that after the expiry of that period, the tenants would get another document from the Raj. Admittedly they did not obtain any such document from the Raj. In absence of reliable evidence as to the possession of Navin or the respondents, after the expiry of the said lease, at least since after the death of Navin, it cannot be held that the respondents have got title to the land under acquisition on the basis of Ext. 2. I, accordingly, hold that the respondents had not acquired any title and were not in possession of the land under acquisition at the time of the acquisition and, therefore, they are not entitled to any compensation. The appeal of Srinivas Ganeriwalla having been dismissed, it has

to be held that the land under acquisition had vested in the appellant and it was entitled to compensation thereof.

12. In the result, the appeals are allowed and the judgment and awards of the court below are set aside. Let an award for the compensation allowed by the Collector be now prepared in the name of the appellant. In the circumstances of the case, specially non-inclusion of important documents in the paper book of the appeal by the appellant, there will be no order as to costs. Let the parties bear their own costs throughout.

S.P. Sinha, J.

13. I agree.