

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.137 of 1997

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1 (a). Md. Ataur Rahaman wife of Bibi Jaibun Nisa, R/o village-
Panchgachhi, P.S.- Kadwa, District- Katihar
(b). Akala Begum D/o Bibi Jaibun Nisa, wife of Md. Aiyub, R/o
village- Sihpur, P.O. & P.S.- Balia berlon, District- Katihar
(c). Sabara Khatoon D/o Bibi Jaibun Nisa, wife of Md. Zahid
Hussain, R/o village- Kandela, P.s.- Sudhani, P.S.- Barsoi, District-
Katihar
(d). Md. Zahid Iqbal son of Bibi Jaibun Nisa
(e). Md. Nawaid Alam son of Bibi Jaibun Nisa
(f). Md. Obaidur Rahman son of Bibi Jaibun Nisa
(g). Md. Juned Alam son of Bibi Jaibun Nisa
All R/o village- Panchgachhi, P.s.- Kadwa, District- Katihar

.... Appellants

Versus

1. The State of Bihar
2. Chief Engineer, Water Resources Department, Purnia
3. Executive Engineer, Flood Control Division, Salmari Division
Salmari, District- Katihar
4. Superintendent Engineer Mahananda Flood control circle
Katihar
5. S.D.O., flood Control, Sub-Division Salmari, District- Katihar

.... Respondents

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Appearance :

For the Appellants : Mr. MD. A.RAHMAN
Mr. Md.Fazal Rahman
Mr. Md.Fahimuddin
Mr. Md.Rahmatullah

For the Respondents: Mr. B.N.SINGH(AAG.1)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date: 11-08-2017

The instant appeal has been preferred against the judgment and decree dated 15.01.1997 and 30.01.1997 respectively passed by Sri S. P. Singh, the then Sub-Judge III, Katihar in Money Suit no. 8 of 1995 / 9 of 1996 whereby and whereunder the suit was dismissed.



2. The plaintiff-appellant has filed the aforesaid suit for a money decree for Rs. 2,47,867/- fully detailed in Schedule I of the plaint with interest both pendente lite and future till realization and also for the cost of the suit against the defendants.

3. Briefly stated, the case of the plaintiff is that she possessed 2.50½ acres of land appertaining to RS plot No. 1016, 1068 and 1068/1230 in village Unase Panchgachhi under Kadwa Police Station, District- Katihar. For construction of Ring Bandh at muza Unase Panchgachhi the aforesaid land as detailed in schedule I of the plaint was temporarily acquired and by the authorized staffs of defendants, the earth was cut and removed from R.S. Plot No. 1016 up to 6-7 feet deep which makes the aforesaid land unfit for cultivation. The authorized staffs of defendants also cut and removed the earth from R.S. Plot No. 1068 and 1068/1230 up to 6-7 feet deep and makes the land of these plots unfit for cultivation. She being old and illiterate lady and behind the back of her husband the staffs of defendants came to her house and took her L.T.I. on several papers and paid a sum of Rs. 2133/- only by way of ad interim compensation for the earth cut and removed from R.S. Plot no. 1016 and it was said that Rs. 1827/- was for the crops of one year and Rs. 306/- was paid as compensation. She was not provided the accounts and government rate, no compensation either ad interim or final



was paid to her for cutting and removing the earth from R.S. Plot No. 1068 and 1068/1230 as well as for the crops. She was assured that the compensation will be paid but no compensation has been paid to her as yet for those two plots. She claimed that she is entitled to Rs. 2,50,000/-, as per the government rate and circular, by way of compensation for cutting and removing the earth for the construction of Ring Bandh and also for crops damaged and further that the lands become unfit for cultivation. She demanded but in spite of her demand the officer has not paid any heed, resulting the necessity of filing of the suit after serving the notice under Section 80 of the C.P.C. on defendant. The cause of action for the suit arose in the month of December, 1992 the date on demand of payment of the aforesaid amount and also on 07.04.1994 the last date of demand.

4. The defendants have filed written statement but it appears that the defendant no. 5 the S.D.O., Flood Control Department, Salmari has filed written statement. According to written statement, the suit as framed is not maintainable because the plaintiff has no cause of action, the suit is barred by law of limitation waiver, estoppel and acquiescence. Defendants no. 2 to 5 have been unnecessarily impleaded, since they have discharged their duties, therefore, the suit suffers from misjoinder of parties. According to written statement, the earth deep up to 2 feet were cut from R.S. Plot



No. 1016 only after temporary acquisition and no earth was cut from R.S. Plot No. 1068 and 1068/1230 which is clear from the record maintained by Engineers Department of Flood Control. It is wrong to say that earth 6-7 feet deep were cut from aforesaid three plots. It is also denied that the staffs of defendants took her L.T I. on several papers behind the back of her husband without giving any account. Earth up to 2 feet deep from R.S. Plot No. 1016 was cut which now lies on the Ring side adjacent to the Ring Bandh and the plaintiff has sown and grown Grama paddy which shows that the land of R.S. Plot No. 1016 is being cultivated and crops are grown by the plaintiff. At the time of taking possession of the lands of R.S. Plot No. 1016 by the defendants there was parwal crop in the area of 1.35 acres which is evident from measurement book No. 361 at page no. 72-73 on the basis of which the department approved the compensation of Rs. 1822.50/- payable to her as compensation and for temporary acquisition of 1.35 acres of plot no. 1016 for cutting earth figures in M.B. No. 361 at page 95-96 at the rate of Rs. 215/- per acres approved by the government and the plaintiff has already been paid the entire amount finally and nothing is due from the defendants. It has also been denied that there is a circular of the government at the rate of 2,50,000/- to the plaintiff for cutting and removing the earth from her lands and therefore, the plaintiff is not entitled to further claim for compensation of



Rs. 2,47,867/-. No notice under Section 80 C.P.C. has been legally served upon defendant, no assurance was given to the plaintiff that she would be paid compensation after final determination after due notice to her. On this grounds it has been prayed to dismiss the suit with cost.

5. On the basis of pleadings of the parties, the learned court below framed the following issues on re-cast for consideration:-

- (i) Is the suit as framed maintainable ?
- (ii) has the plaintiff any valid cause of action for the suit against the defendants ?
- (iii) Is the suit time barred ?
- (iv) Is the suit barred by law of estoppel, waiver and acquiescence ?
- (v) Whether the defendants cut 2 feet deep earth or 7-8 feet deep from the lands of R.S. Plots No. 1016, 1068 and 1068/1230 ?
- (vi) Whether the defendants have also cut earth from R.S. Plot No. 1068 and 1068/1230 ?
- (vii) What was the rate of earth cutting and whether the alleged compensation demanded by the plaintiff be awarded ?
- (viii) Did the plaintiff serve notice u/s 80 C.P.C. on the defendants and if so whether the notice is legal and valid ?
- (ix) Is the plaintiff entitled to get a decree for Rs.



2,47,867/- as per amount given by the plaintiff ?

(x) To what other relief or reliefs if any the plaintiff is entitled to get ?

6. Learned court below took up the issue no. (i) at first and came to the conclusion that the suit as framed is not maintainable. Issue no. (iii) and (iv) were not pressed for consideration, issues no. (v) and (vi) were taken together and were decided against the plaintiff and in favour of the defendants holding that earth only 2 feet deep was cut from R.S. Plot No. 1016 only and no earth was cut from R.S. Plot No. 1068 and 1068/1230. Issue No. (vii) was thereafter, decided also against the plaintiff. Issue no. (viii) was decided in favour of the plaintiff holding that notice under Section 80 C.P.C. on the defendants was served legally. Issue no. (ii) was also decided against the plaintiff. Issues No. (ix) and (x) were also decided against the plaintiff and it was held that the plaintiff is not entitled for decree as claimed and accordingly, the suit was dismissed on contest but without cost.

7. The plaintiff-appellant being aggrieved and dissatisfied with the said judgment and order preferred this appeal challenging the legality, correctness and propriety of the same on the grounds that the judgment and decree passed by the learned court below is illegal and the same is fit to be set aside. Findings of the learned court below are against the weight of evidence on record and the same is



based on surmises and conjectures. Learned court below failed to consider the evidence adduced on behalf of the appellant. Learned court below wrongly held that the suit is not maintainable and hit by Sections 18 and 23 of the Land Acquisition Act. The learned court below wrongly arrived at a finding based on aforesaid provisions of law that the land was temporarily acquired for construction of Ring Bandh which is against the weight of spirit of law and in complete violation of different provisions of the Land Acquisition Act. The learned court below arrived at an erroneous and perverse finding with regard to the compensation of the land since there was no proper acquisition of land of the appellant as no law has been brought into force. The learned court below arrived on a wrong conclusion that only earth of 2 feet deep was cut from plot no. 1016 and no earth was cut from R.S. Plot No. 1068 and 1068/1230 which is against the weight of evidence. The learned court below has wrongly relied upon the measurement book and arrived at an erroneous and illegal finding that the earth was cut and removed up to 2 feet deep and did not consider and relied upon the evidence of PW 6. Learned court below did not consider the evidence of PWs and arrived at an illegal and perverse finding. The learned court below did not consider the different provisions of law, rules and circulars issued by the State Government for deciding the compensation. Learned court below wrongly held that the



appellant has got no cause of action for the suit and therefore, she was not entitled for any relief. There was nothing on the record to show that under the provision of Land Acquisition Act the land was temporarily acquired, no notice was served under the said Act and as such the suit was not barred under Sections 18 and 23 of the Land Acquisition Act. Order 41 Rule 31 C.P.C. provide a guidelines for the appellate court as to how the court has to proceed and decide the case. It must be evident from the judgment of the appellate court that the court has properly appreciated the facts, evidence, applied its mind and decided the case considering the materials on record. The entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirement of the said statutory provisions and for that reliance has been placed upon a judgment reported in **AIR 2011 Supreme Court page 1492** (paragraph 18) in the matter of **H. Siddiqui (dead) by LRs... v. A. Ramalingam**. The judgment in first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. Further reliance has been placed upon a judgment reported in **2017 (1) PLJR page 390** in the matter of **Ram Charan Mistry & Ors..Appellants Vs. Shib Sharma & Ors...Respondents**. It has further been argued that the evidence of PWs have been



ignored on the basis of minor contradictions. The evidence of PWs should be carefully scrutinized and then the findings would be otherwise.

8. On the other hand, learned counsel for the respondent has argued that on the record, there is documentary evidence i.e. measurement book by which it reveals that the earth up to 2 feet deep was cut and removed from plot no. 1016 only and not from R.S. Plot No. 1068 and 1068/1230. Learned court below has scrutinized the evidence available on the record in right perspective and then has given findings which are quite legal, proper and correct. The findings of the learned court below is based on proper appreciation of facts and law and the suit has been rightly dismissed. The proper compensation has already been paid to the plaintiff and now she is not entitled for any further compensation. The plaintiff has not approached the Collector of the District, no proper application was filed in this regard to get the matter referred for determination of the compensation by the court. Land Acquisition Officer has not been made party in this suit and as such the learned court below has rightly held that the suit as framed is not maintainable. The suit has rightly been dismissed and the findings of the learned court below is fit to be affirmed.

9. On the basis of rival contentions of the parties the following points have been formulated for determination in



this appeal:-

(i) Whether the suit is maintainable under the provisions of Section 18 and 23 of the Land Acquisition Act ?

(ii) Whether only 2 feet deep earth was dug from plot no. 1016 only or 6-7 feet earth was dug from R.S. Plot No. 1016, 1068 and 1068/1230 ?

(iii) Whether the compensation paid is sufficient or not ?

FINDINGS:-

10. Point No. (i):- Admittedly, the plaintiff took compensation money of Rs. 2133/- for the crops of one year and the earth cut from R.S. Plot No. 1016. According to the plaint (para 2), lands were temporarily acquired by the defendant for cutting earth for construction of Ring Bandh situated in village Unase Panchgachhi under Kadwa Police Station, District- Katihar. The plaintiff has also admitted in paragraph 4 of her pleadings that she received Rs. 1827/- for crops of one year and Rs. 306/- as the compensation for the earth only for plot no. 1016 but no compensation was paid to her for the earth and crops of R.S. Plot No. 1068 and 1068/1230. On behalf of the State it has been submitted that only earth was cut from R. S. Plot no. 1016 for the purpose of aforesaid Ring Bandh and no earth was cut and removed from other two plots as alleged by the plaintiff which is evident from measurement book-Ext. B page No. 72-95 is Ext. B/1. On behalf of plaintiff Md. Ataur Rahman PW 6, who is the



husband of the plaintiff, has been examined, he has come to say in paragraph 5 of his evidence that no notice was served for temporary land acquisition. In paragraph 7 he has admitted that he has not inquired the matter in writing from the department. It appears from his evidence, in paragraph 13, that his wife accepted the aforesaid amount without any objection. Thus, in my opinion also, the land in question was temporarily acquired for the construction of Ring Bandh in village Unase Panchgachhi under Kadwa Police Station, District- Katihar. Admittedly, the land was acquired under the provisions of the Land Acquisition Act, 1894 coupled with Land Acquisition Rules, 1963. If the plaintiff was not satisfied with the compensation, paid to her, then she should have been written an application to the Collector who may have got the matter referred for determination of the compensation by the court. Secondly, according to Section 23 of the Land Acquisition Act, the compensation and damages could have been determined by the court and further the Land Acquisition Officer has not been made party in this suit. Under the provisions of Land Acquisition Act no step was taken by the plaintiff for redressal of her grievance and filed the suit without taking the shelter under the provisions of the Land Acquisition Act. Therefore, on this ground also, I also hold that the suit as framed is not maintainable in view of the provisions of sections 18 and 23 of the land Acquisition Act.



Accordingly, this point is decided in favour of the respondents and against the appellant.

11. Point No. (ii):- It is the admitted case of the parties that earth from R.S. Plot No. 1016 was cut and removed up to 2 feet deep for the construction of Ring Bandh. The defendants have denied that no earth was cut from R.S. Plot No. 1068 and 1068/1230 whereas it is the definite case of the plaintiff that earth deep up to 6-7 feet was cut from R.S. Plot No. 1068 and 1068/1230 also. On behalf of the plaintiff no documentary evidence has been adduced in this regard. In 1992 the plaintiff did not take any step to get the land measured by any Amin nor she filed any objection in the suit to get these three plots measured to show whether earth up to 6-7 feet were cut from the aforesaid plots. Ring Bandh was constructed and actual earth removed from R.S. Plot no. 1016 has been mentioned in measurement book no. 361 Ext. B-1 and the payment has also been shown in the aforesaid measurement book. If the earth would have been cut and removed from R.S. Plot No. 1068 and 1068/1230 that measurement must have been shown in the said measurement book because payments to the contractor are made according to the measurement noted in the measurement book by Overseer or S.D.O. of the department. PW 6 in his evidence has denied his knowledge about the measurement book but he has admitted in paragraph 8 that



the office of the Executive Engineer, S.D.O., Junior Engineer of Bandh Division is situated at Salmari. From his evidence it also appears that the payment was made to his wife at his residence, he also admitted that in 1992 there was parwal crop in plot no. 1016. Measurement book which is Ext. B which has wrongly been described as Ext. A in the judgment of learned court below in paragraph 12. From that measurement book it is evident that only earth was cut and removed from R.S. Plot No. 1016 up to 2 feet deep for the construction of aforesaid Ring Bandh. No earth was cut from other two plots as alleged by the plaintiff. In view of the Ext. B and B/1 the whole claim of the plaintiff is falsified.

12. On behalf of the plaintiff Ext. 1 is the signature of Md. Idris on the sale deed, Ext. 2 is the rent receipt, Ext. 3 and 3/A are the legal notice under Section 80 C.P.C., Ext. 4 to 4/D are postal receipts. PW 1 is Adbul bari. He has stated that earth from 6 bighas were cut and 5-7 feet deep earth was cut from the lands of the plaintiff and also from his land and the compensation was paid. He has stated that plaintiff was paid compensation at old rate but he has not disclosed as to what was the rate in 1992 for the earth. In cross-examination he has stated that the plaintiff is his bhabhi. He has admitted that there was parwal crop in the land of the plaintiff. He has further stated that at the time of cutting and removing the earth junior Engineer was present and he was getting the



earth cut according to paper. He has not been able to dispute the correctness of the entries made in the measurement book. From paragraph 6 of his evidence it reveals that the lands of two plots of the plaintiff are in the river bed. PW 2 is Shambhu Parihar he has also come to say that the land up to 5-7 feet deep was cut from the lands of the plaintiff and he has been cross-examined and it reveals that he has no correct idea. He has admitted that a contractor was there to cut and remove the earth. He is a labourer engaged by the contractor. He has admitted that the husband of the plaintiff used to come when the earth was cut and removed from the field. PW 3 is Mahboob. He has also come to say that earth up to 5-7 feet deep was cut from the lands of the plaintiff. He has admitted that at the time of cutting earth Junior Engineer was present. He is also related with the plaintiff. He has also stated that he has no knowledge as to how much earth was cut from the lands of the plaintiff. In paragraph 7 of his evidence he has stated that disputed lands have gone into the river bed but again he said that the disputed lands have not gone in the river bed. PW 4 is Md. Azad. He has also come to say that 5-7 feet deep earth was cut from the lands of the plaintiff, he claims to have his land north of the suit land. During cross-examination he has become incompetent and does not establish that actually 6-7 feet deep earth was removed from the lands of the plaintiff who has also not been



able to say that the earth was also cut from the aforesaid two plots. PW 5 is Md. Idris. He has also come to say that 5-7 feet deep earth was cut from the lands of the plaintiff but during cross-examination he is not able to say that actual earth was cut and removed from R.S. Plot No. 1068 and 1068/1230. PW 6 is Md. Ataur Rahman who is the husband of the plaintiff. He has stated that the defendants cut and removed earth from his three plots making deep 6-7 feet in his land. He has stated that his wife was paid compensation according to the rate of 1959 and the Amin had assured her to pay more after determination. He has stated that he had never gone to the office of the Bandh. In paragraph 5 of evidence he states that his son told him that about the cutting of the earth from other two plots about 6-7 feet deep and according to his statement, his wife has filed the suit. He had himself not get measured the land as to how much deep earth was cut from his land. Therefore, he has failed to prove his plaint because he has also denied about the knowledge of measurement book. From paragraph 14 of his evidence it reveals that he does not know on what basis he is claiming the aforesaid compensation, he also admitted in paragraph 14 of his evidence that there is no proof to prove that earth was also cut and removed from the aforesaid two plots. In paragraph 12 he has admitted that he has also not filed objection against the compensation paid to his wife.



13. After careful and cautious scrutiny of the evidence available on the record, both oral and documentary, I find and hold that the earth was only cut and removed 2 feet deep from plot no. 1016 only and not from R.S. Plot No. 1068 and 1068/1230. I therefore, hold that the plaintiff was paid compensation for the earth removed from plot no. 1016 only for parwal crop of one year. No government circular or notification has been brought on record by the plaintiff for more compensation. In the result, this point is decided against the appellant and in favour of the respondents.

14. Point No. III:-As per plaint (paragraph 6), the plaintiff is entitled to claim compensation for damages of Rs. 2,50,000/- as per government rate and circular. However, the plaintiff has failed to bring any other rate and government circular on the record. The witnesses examined on behalf of the plaintiff have stated that the plaintiff has been paid compensation and she has received the same without any objection. No cogent and reliable evidence has been adduced on behalf of the plaintiff to prove that earth was taken from R.S. Plot No. 1068 and 1068/1230 also and crops were damaged. The rulings relied upon by the learned counsel for the appellant is for academic discussion and are not helpful for the appellant. Under the circumstances, the plaintiff/appellant is not entitled to claim such compensation and the compensation awarded was proper and legal,



therefore, this point is also decided against the appellant and in favour of the respondent.

15. In the result, the impugned judgment above mentioned passed by the learned Sub-Judge III, Katihar is hereby affirmed and finding no merit in this appeal, the same is hereby dismissed on contest but under the circumstances without cost.

(Jitendra Mohan Sharma, J)

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