

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.359 of 2003

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The Managing Director, Bihar Hydro Electric Power Corporation, Sone Bhawan, at P. O. and District- Patna.....Defendant/Appellant

Versus

1. (a) Binod Bihari Singh
(b) Pramod Singh
both sons of Smt. Janak Dulari Devi, R/o village- Rampurwa, P.S.- Valmikinagar, District- West Champaran, Bettiah
.....Plaintiff/Respondent Ist Set
2. Project Manager, Eastern Gandak Canal Hydro Electric Project, Valmikinagar, at & P.O.- Valmikinagar, District- West Champaran
3. The Executive Engineer-I, Eastern Gandak Canal Hydro Electric Project, Valmikinagar, At P.O. & P.S.- Valmikinagar, District- West Champaran
4. Sri Sanjeev Ranjan Sinha, Executive engineer-I, Eastern Gandak Canal Hydro Electric Project, Valmikinagar, P.O. & P.S.- Valmikinagar, District- West Champaran
5. District Land Acquisition Officer, at & P.O.- Bettiah, District- West Champaran
6. The State of Bihar through the Collector at and P.O. Bettiah, District- West Champaran
7. Sri Laxman Singh, Contractor, Satyam Co. Eastern Canal Hydro Electric Project at P.O. + P.S.- Valmikinagar, District- West Champaran
.....Defendants/ Respondents
- =====

Appearance :

For the Appellant/s : Mr. Avanish Nandan, Advocate
For the Respondent/s : Mr. Nawal Kishore Singh, Advocate
Mr. Jitendra nath Tiwary, Advocate
Mr. Sanjeev Kumar Sanju, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 21-03-2018

The instant appeal has been preferred against the judgment dated 11.09.2003 and decree dated 24.09.2003 passed by Shri Krishna Kumar Srivastava, the then Sub-Judge II, Bagaha in Title suit No. 31 of 1993 whereby and whereunder the suit was decreed



with cost and the notification issued by the Land Acquisition Officer, West Champaran No. 176 dated 07.12.1995 was held not binding upon the plaintiff as it was never acted upon and further the decree of ejectment of the defendant from the suit land was passed by putting the plaintiff in possession and the plaintiff was also found entitled for damages to the tune of Rs. 50,000/- only.

2. The contesting defendant no. 1 is the appellant, the plaintiff is the respondent first set whereas other defendants are respondents second set.

3. The plaintiff-respondent first set had filed the aforesaid title suit against the defendants for a decree of ejectment of the defendants from the suit land described in schedule I of the plaint and for restoration of possession of the plaintiff over suit land by removing all the articles of the defendants and further for a decree for the damages for sum of Rs. 2,75,000/- along with pendente lite and future damages and also for the cost of the suit.

4. Briefly stated, the case of the plaintiff is that the land in suit described in schedule I of the plaint measuring 87 decimals out of 7 acres 54 decimals under khata no. 20/3 situated at village Rampurwa, P.S.- Valmikinagar, Bagha, District- West Champaran of survey plot no. 64 was settled by State Government to one Basarat Dewan of village Tribhuani, P.S.- Bagha, District- West



Champan, the said settlee was coming in his cultivating possession and was paying rent since the year 1958. The aforesaid Basarat Dewan sold the land in question for valuable consideration vide registered sale deed dated 06.08.1968 to the plaintiff and after purchase of the land the plaintiff used the land for cultivation and also planted valuable trees including khaira and Bet. The name of the plaintiff was also mutated in the office of State of Bihar and the plaintiff paid the rent to the State of Bihar. The purchased land is the source of livelihood of the plaintiff. The defendant first party have acquired the land lying to the east of the purchased land of the plaintiff. The plaintiff had gone to Varanasi for the religious purpose and due to illness and old age took a long stay and she came back to her village Rampurwa in the month of April, 1993 and then came to know that without her permission and without proper acquisition the defendant first party have taken possession in collusion with one and other by keeping their equipments and other materials being used for the purpose of construction of canal by damaging the standing crop and by cutting several valuable trees. When the plaintiff asked to the defendants, the defendants stated that they will vacate her land soon and they are also making for the arrangements for proper acquisition of the land and also to provide proper compensation to the plaintiff but the assurance



given to the plaintiff was false and the defendants neither vacated the land of the plaintiff nor paid any compensation to her. The plaintiff also got issued a notice to defendants through her Advocate on 15.04.1993 wherein she demanded damages to the tune of Rs. 2,50,000/- for illegal uses but in spite of notice the defendants neither vacated the land nor paid any compensation to the plaintiff. The defendants are went upon to continue in their illegal occupation of the suit land without paying any compensation to the plaintiff. The defendants first party are getting the above mentioned Tailrace channel and the defendants second party and their contractor are helping for the above purpose. The defendant after institution of the suit, taking advantage of their office and influence got a notification issued by land acquisition office, Bettiah vide notification no. 176 dated 16.12.1995 for acquisition of the suit land area 72 decimal to legalise their illegal occupation and encroachment after receiving the legal notice of the plaintiff but no remedy has been given by the said office as yet. The aforesaid notification for acquisition of the suit land by District Land Acquisition Officer is quite motivated and highly illegal with a view to justify the illegal encroachment made by defendants no. 1 to 5 to grab the properties of the plaintiff as per



sweet will of the defendants which is fit to be nullified. The plaintiff filed the suit for reliefs sought.

5. The defendants no. 1 to 3 have filed their written statement on the ground that the suit of the plaintiff is not maintainable, the plaintiff has got no cause of action, the suit is barred by law of limitation, estoppel, waiver and acquiescence. The defendants first party are constructing Tailrace Channel of Gandak Canal Hydro Electric Project and for that purpose they have acquired the land, the acquisition of the land is the act of the State Government and not at all of these defendants. It is wrong to say that the plaintiff was ever given any assurance to pay the compensation but it is admitted that legal notice dated 15.04.1993 was received by these defendants and accordingly, these defendants requested the district authorities for looking into the matter vide letter dated 28.04.1993. These defendants are not compensation giving authorities rather it is for the State Government to acquire the land and to pay the compensation. The plaintiff, in spite of approaching the land acquisition officer, wrongly filed the present suit with a view to cause hindrance in smooth functioning of the project work. The land in suit is situated just in the vicinity of forest land and i.e. about 20 hectare forest land as well as other lands of village Rampurwa were acquired by



the State Government in the year 1988-89 and the work of Tailrace Channel of Gandak Canal Hydro Electric Project commenced in the year 1989 and the same was completed till 31.05.1992 by the different contractor according to the prescribed plan, within the knowledge of the plaintiff and other public concern. The son of the plaintiff namely, Sri Pramod Singh is the local mukhiya of Valmikinagar Gram Panchayat who has huge landed properties. It is wrong to say that the defendants have wrongly occupied the land and have not been vacating the same. It is also false to say that the defendants have damaged the crops of the plaintiff and cut the trees. The forest department got the land acquired prior to commencement of the work of Tailrace Channel. These defendants have no concern to occupy the land of private individual. The land in question was measured by the Amin. After measurement it was found that the land measuring 63 decimals has not been acquired which is under the constructed channel. After measurement of the land by Amin the notification for acquisition for the land was issued vide notification no. 176 dated 07.12.1995. The suit is vexatious and against the law and principle of public policies and as such the same is fit to be dismissed.

6. The defendants no. 6 and 7 have also filed the written statement on the grounds that the suit as framed is not



maintainable either in law or on facts. The plaintiff has got no cause of action for the suit. The story of the plaintiff is quite motivated, highly illegal and it is not true that with a view to justify the illegal encroachment made by defendants no. 1 to 5 and to grab the properties of the plaintiff these defendants have acted. These defendants have no illegal motive or any collusion with defendants no. 1 to 5, these defendants have merely acted on the proposal made by the Bihar State Hydro Electric authorities to acquire the suit land of plot no. 64 sometimes in the year 1995 and subsequently, these defendants issued the notification no. 176 dated 07.12.1995 for acquisition of the suit land. Till issuing the notification these defendants had no knowledge of the present suit. Even about the ascertain that the defendants no. 1 to 5 had encroached upon the suit land and constructed the Tailrace channel without legal process of acquisition of the land. These defendants after receiving the notice of this Court stopped the further proceeding rather they decided to wait the decision of the court, these defendants have got no concern for any commission or omission, if any, of the defendants no. 1 to 5 and the present suit is baseless against these defendants.

7. Learned trial judge framed the following issues:

(i) Is the suit framed as maintainable ?



(ii) Is the plaintiff got any valid cause of action for the suit ?

(iii) Is the suit barred by law of limitation, estoppel, waiver and acquiescence ?

(iv) Is the Tailrace Channel constructed by the defendants over the suit land without permission of the plaintiff as also without moving for acquisition of land under the provisions of Bihar Land Acquisition Act ?

(v) Is the plaintiff entitled for a decree of ejectment of the defendants from the suit land detailed in Scheduled I of the plaint ?

(vi) Is the plaintiff entitled for the damages to the tune of Rs. 2,75,000/- ?

(vii) Is the notification dated 07.12.1995 bearing No. 176 issued by defendant no. 6 in respect of the land was acted upon and binding to the plaintiff ?

(viii) To what relief or reliefs the plaintiff is entitled for ?

8. Learned court below took up the issue no. iv,v, vi and vii together and decided these issues in favour of the plaintiff. Thereafter, issue no. i and ii were taken together and those issues were also decided in favour of the plaintiff. Issue No. viii was also decided ordering that the suit of the plaintiff is decreed with cost. Notification issued by the Land Acquisition Officer, West Champaran bearing no. 176 dated 07.12.1995 was never acted



upon and the same is not binding upon the plaintiff. Further the decree of ejectment of the defendants from the suit land was also passed by putting the plaintiff in possession. The plaintiff was also found entitled for damages to the tune of Rs. 50,000/- only.

9. The defendant no. 1 being aggrieved and dissatisfied with the judgment and decree preferred the instant appeal challenging the maintainability of the same. The learned counsel for the appellant arguing in this appeal has submitted that the learned court below has not appreciated the facts and law involved and without applying judicial mind and after committing several irregularities have given its finding. The learned court below has adopted the double standard in appreciation of evidence adduced on behalf of both the parties. The learned court below has not appreciated the fact that the land in question is the part of the Eastern Gandak Canal Hydro Electric Project for which the appellant has acquired the land for constructing the Tailrace Canal Channel and the land in question is part of the Tailrace channel. The learned court below has not appreciated the fact for the acquisition of the land in question which was the part of the project, necessity of seeking permission from the plaintiff for acquisition of land in question was at all not required. The learned court below has not appreciated the fact that the acquisition of the



land is the act of the State Government with which the appellant is at all not concerned. The learned court below has erred in appreciating the fact that as soon as the appellant got the legal notice from the plaintiff, the appellant has proceeded requesting the District Authorities for looking into the matter for acquisition of land in question by letter dated 28.04.1993 bearing letter no. 61. The appellant is not compensation giving authority rather it is the State Government who is the authority to acquire the land and pay compensation to the plaintiff respondent. The land in question is situated in the vicinity of the Forrest land and the entire forest land of village Rampurwa was acquired by the State Government in the year 1988-89. The project in question was commenced in the year 1989 and the same was completed till 31.05.1992 according to the prescribed plan within the knowledge of the plaintiff and his son who is a local Mukhiya. The plaintiff earlier never represented or raised objection. The appellant has not damaged the crops and has not cut the trees rather it is the Forest Department who cut and cleared the land. The learned Court below has not considered at all the notification bearing no. 176 dated 07.12.1995 which has already been issued for the acquisition of the land in question. During pendency of the suit the State of Bihar has been made party but compliance of Section 80 C.P.C. has not been made. The



learned Court below failed to appreciate that as soon as the proceeding under the land acquisition act comes into play, the suit is barred under the provisions of the Land Acquisition Act. The learned court below has wrongly relied upon the evidence of the plaintiff. The learned court below without any basis and foundation wrongly held the notification dated 07.12.1995 as motivated and malafide. The damages awarded to the plaintiff respondent is based on imagination and as such is fit to be quashed. The judgment and decree impugned are not sustainable in the eye of law and are fit to be set aside.

10. On the other hand, learned counsel for the respondent no. 1 has argued that it is an admitted fact that the suit land was not acquired and without acquiring the suit land of the plaintiff, the appellant damaged the crops and trees standing thereon and illegally occupied the suit land. The title of the plaintiff respondent is not denied. It is an admitted fact that the plaintiff has purchased the land of plot no. 64 area 7 acre 54 decimal of village Rampurwa from one Basarat Dewan through registered sale deed dated 06.08.1968 vide Ext. 1. The name of the plaintiff was mutated and she is paying rent and getting rent receipts vide Ext. 2. It is also an admitted fact that the suit land was not acquired and after encroaching over the suit land the appellant got constructed



Tailrace Channel so the plaintiff is entitled for a decree of recovery of possession over the suit land and the learned court below has rightly passed the judgment and decree. The grounds as urged by the learned counsel for the appellant are not at all maintainable. The witnesses of the plaintiff have stated that the defendants have constructed the channel over the land of the plaintiff after illegally occupying the same. The evidence adduced on behalf of the defendants is only to the extent that the channel was constructed for public interest and as soon as the appellant got the knowledge, letter no. 61 dated 28.04.1993 was written to Land Acquisition Officer vide Ext. A, and then, notification no.176 dated 07.12.1995 was issued during pendency of the suit. The learned court below after discussing the evidences adduced on behalf of both the parties has rightly given its finding and there is no need of any interference by this Court. In the written statement filed by defendants 6 and 7, these defendants have not supported the acts of defendants no. 1 to 5 and have not supported the genuineness of notification issued by them bearing no. 176 dated 07.12.1995 and have shifted the burden upon defendants no. 1 to 5 for constructing the Tailrace Channel over the suit land by encroaching upon the same.



11. The only point for consideration is as to whether the Tailrace Channel was constructed over the suit land without any valid acquisition and after encroaching over the same.

FINDINGS:

12. It is an admitted fact that the suit land was not acquired, no compensation was given to the plaintiff and without acquiring the suit land Tailrace Channel was constructed over the suit land measuring 87 decimal without any valid acquisition and thus, the appellant has encroached the land in question. During pendency of the suit notification no. 176 dated 07.12.1995 was issued which is not legal rather the same is motivated and malafide and is not binding upon the plaintiff. The appellant and his officers are responsible for illegal encroachment over the land of the plaintiff. It is also an admitted fact that the trees standing over the suit land were cut and the land was occupied for construction of Tailrace channel. The learned court below after considering the evidences adduced on behalf of both the parties has rightly come to the conclusion. The findings of the learned court below is quite legal, proper and correct and there is no need of any interference by this Court. The damages as assessed by the learned court below is not excessive or imaginary rather it is based upon the facts and evidences available on the record. It is an admitted fact that the



plaintiff has not been given any compensation for occupying the suit land. It is also an admitted fact that no award has been prepared within the statutory period of two years from the date of publication or declaration, therefore, the entire acquisition proceeding has lapsed and the learned court below has rightly relied upon the decision as reported in **2001 (3) PLJR page 50** in the case of **Krishnanandan Prasad Singh Vs. The State of Bihar.**

13. The grounds urged by the learned counsel for the appellant are not at all sustainable and have got no leg to stand. The evidences of the parties as discussed by the learned court below are not at all required to be repeated here. The learned court below has rightly appreciated and considered the facts and evidences available on the record. All the issues have rightly been decided by the learned court below and there is no need of any interference by this Court.

14. In the result, finding no merit in this appeal, the same is hereby dismissed on contest with respondent no. 1 but under the circumstances without cost.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
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