

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.200 of 2003

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The State of Bihar through the Collector, Nawadah.

.....(Defendant).... Appellant.

Versus

1. Mukund Lal S/O Shiv Nandan Lal
2. Jitendra Lal S/o Gopi Lal, Both residents of Village- Chiraila, at present Village & P.S. Rajauli, District- Nawadah.

.....(Plaintiffs).... Respondents

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Appearance :

For the Appellant : Mr. Randhir Kumar & Mr. Binod Kumar
Yadav, A.C. to S.C. 18

For the Respondents : Mr. RAVINDRA NATH DUBEY
Mrs. Punam Kumari

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 17-04-2018

Heard Sri Randhir Kumar, the learned A.C. to S.C. 18
for the appellant and Sri Ravindra Nath Dubey, the learned counsel
for the respondents.

2. The opposite party has preferred this appeal
against the judgment and award dated 04.04.2003 passed by Sri Shiva
Shankar Sharma, the then learned 1st Additional District Judge,
Nawadah in L.A. Case No. 205 of 1985/ 45 of 1991, whereby and
whereunder, the reference was allowed in part on contest. The
compensation of the acquired land was fixed @ of Rs. 300/- per
decimal. The respondents (claimants) were found entitled to get 30%
by way of additional statutory compensation because of compulsory
nature of the acquisition and also were held entitled to interest @ 9%



per annum on the excess amount. They were again found entitled to interest @ 12% per annum on the additional compensation from the date of issue of notice under section 4 (1) of the Act up to the date of Collector's award or the date on which possession was acquired and the land was taken by the State whichever is earlier, and accordingly the award was prepared. The claimants are respondents.

3. The aforesaid L.A. case was referred by the Collector, Nawadah under sections 18 and 30 of the L.A. Act for fixation of the adequate compensation and also for fixation of beneficiary concerning 5 acres of land of plot no. 281 under Khata no. 62 of Village- Bhitia.

4. For construction of Phulwaria Dam the aforesaid land was acquired and the notification under section 4 (1) of the L.A. Act was published on 26.11.1981. As the aforesaid land was recorded in the revisional survey khatiyan in the name of the State of Bihar and as such the amount of award was deposited in the treasury in favour of the State of Bihar. The respondents filed application before the Collector Nawadah claiming the land on the basis of the prior settlement from the ex-landlord and also on the basis of the continued possession over the same till the date of acquisition. Quantum of compensation was also challenged stating the market value of the land was Rs. 500/- per decimal. The Collector, Nawadah referred the case



to the learned court below. The respondents adduced oral evidence as well as documentary evidence in support of their claim. The appellant also adduced oral evidence as well as documentary evidence.

5. The case of the respondents/applicants is that the aforesaid land was acquired through oral settlement from the ex-landlord in the year, 1936 by Shivnandan Lal, father of respondent no.1 and grand father of respondent no.2. After the settlement Shivnandan Lal came in possession over the same. The ex-landlord granted Hukumnama in the year 1943 in the name of Shivilal who accepted the rent paid by him time to time and granted rent receipts. At the time of vesting of Zamindari return was filed in the name of Shivnandan Lal by the ex-landlord and after vesting of the estate the respondents are paying rents to the state of Bihar on the basis of the demand. Accordingly it has been urged that the respondents being the rightful owner of the acquired land are fully entitled to receive the compensation.

6. On the other hand, the case of the appellant is that the revisional survey khatian was published in the name of the State of Bihar and the amount of award was deposited in the treasury by the Collector so the claimants are not entitled for compensation.

7. On behalf of the applicants/respondents A.W. 1 is Jitendra Lal, one of the applicants. He has proved his case and



exhibited Hukumnama as Ext.1. He has also proved the two rent receipts as Exts. 2 and 2/1. He has stated that since the time of settlement his grand father was in possession over the land. He used to pay rent to the ex-landlord and after his death the applicants were in possession over the same till the acquisition. The State of Bihar realized rent and granted rent receipts. During cross-examination nothing has come to disbelieve his testimony.

8. A.W. 2 Ramdeo Prakash also stated that plot no. 281 was being cultivated by Shivnandan Lal and after his death by the applicants. The applicants are in cultivating possession of the said land since 40-45 years. The claimants used to pay rent to the State of Bihar also. During cross-examination he has stated that his land is situated near the said plot and he used to see Shivnandan Lal getting the land cultivated. He has admitted that the revisional survey khatian has been published in the name of the State of Bihar.

9. A.W.3 Mukund Lal is another applicant. He has also fully supported his case. He has proved two Zamindari receipts as Exts. 2/II and 2/III. He has stated that the land was cultivated by his father and on his death in the year 1969 he has been dealing the land. During cross-examination he has stated that his father has taken oral settlement from the ex-landlord.

10. A.W. 4 Amrica Mistry has seen Shivnandan Lal



and the applicants cultivating the land. During cross- examination he has stated that the land was 5 acres in areas and at present was submerged in to the water because construction of the Dam. Besides oral evidences Ext. 1 is the Hukumnama granted by the ex-landlord in favour of Shivnandan Lal with respect to the land of Khata no. 62, plot no. 281, area 5 acres. Exts. 2 and 2/1 are the State rent receipts granted in the name of Shivnandan Lal. In Ext. 2 Khata no. 62 is mentioned, whereas, in Ext. 2/1 Khata no. 62 and plot no. 281 is mentioned. Exts. 2/II and 2/III are the rent receipts granted by the ex-landlord. Ext. 3 is the order of the Anchaladhikari, Rajauli with respect to Khata no. 62, plot no. 281, area 5 acres for opening the demand in the name of Shivnandan Lal. Certified copy of the return has also been filed on behalf of the applicants but the same has not been exhibited. Ext. 4 is the judgment passed in L.A. Case No. 149 of 1985 and other connecting L.As. by the District Judge, Nawadah dated 14.12.1985, whereby and whereunder, the valuation of the land was fixed @ of Rs. 300/- per decimal.

11. On behalf of the appellant/opposite party O.W.1 Raj Nandan Prasad was surveyor at the time of execution of Phulwaria Reservior. He has stated that 18.53 acres of land of Village-Bhitiya was found the land of State of Bihar and the Khatian was prepared by the land acquisition department. He has proved the same



as Ext. A. He has further stated that the claimant Mukund Lal was neither the owner nor in possession of the land so acquired. During cross-examination he has stated that the said land was recorded as Gair Mazarua Malik in the cadastral survey. He has further stated that he prepared the land acquisition khatian on the basis of the said survey entry. He has also stated that the claimants never filed objection to him at the time of survey, but subsequently the claimants approached the office and produced Hukumnama, Zamindari receipts and the Government receipts. He has stated that all the lands had become barren because of the acquisition by the State of Bihar. From the evidence of this witness it does not transpire that the land belongs to the State of Bihar.

12. O.W. 2 Vijay Kumar Diwedi is the Karamchari of Rajauli Circle. He has stated that plot no. 281 of Khata no. 62 of Village- Bhitiya belongs to the State of Bihar. He has also stated that the revisional survey khatian has been published in the name of the State of Bihar. The applicants Mukund Lal and Jitendra Lal were not in possession of the said land and the said land always in possession of the State of Bihar. He has also stated that the Hukumnama is forged and Shivnandan Lal was never settled the land by the ex-landlord. During cross-examination he admits that he is Karamchari of the said Mauza since last one year. He has deposed on 30.08.1996 and thus he



is not competent witness to tell about the possession of the land at the time of acquisition. He has further admitted that he cannot say the state of affairs at the time of acquisition of land. He has also stated that his evidence given in the examination-in-chief is for the period of one year from when he is Karamchari of the village. It is an admitted fact that in the year 1996 and one year before the land was in possession of the State of Bihar because of the construction of the Phulwariya Dam. Thus, the evidence of this witness is not helpful for the State of Bihar.

13. From Ext. 1, Exts. 2 series and Ext. 3 it is manifest that the land in question was settled to Shivnandan Lal by the ex-landlord and to memorize the said settlement Ext. 1 was granted. Rent was being realized and the rent receipts are also being granted. The Anchaladhikari, Rajauli by Ext. 3 has allowed to open demand of the land in question in the name of Shivnandan Lal. Thus, the claimants/respondents had acquired possessory title over the land of plot no. 281 under khata no. 62, area 5 acres of Village- Bhitiya. The learned Additional Judge has rightly found that the claimants are entitled to get compensation and not the State of Bihar in whose favour the revisional survey khatian was prepared.

14. Further, on the basis of Ext. 4 which is the judgment of L.A. Case No. 149 of 1985 and other connected L.A.



cases, the learned Additional Judge fixed the valuation of the land in question @ of Rs. 300/- per decimal as in Ext. 4 also the lands were acquired under the same scheme and were adjoining lands. The land of Jageshwar Sah in L.A. No. 149 of 1985 was adjacent to the land of the applicant so acquired. The learned Additional Judge relying upon the Division Bench ruling of this Court reported in 1985 PLJR Page-723 fixed the valuation because the valuation fixed by the Court in the earlier judgment is good piece of the evidence for determining the compensation in the subsequent case for the same scheme.

15. The learned counsel for the appellant during argument has mainly contended that the land in question was recorded in the revisional survey khatian in the name of the State of Bihar and as such the amount of award was rightly deposited in the name of the State of Bihar. The claim of the claimants is not legal because they have not challenged the revisional survey entry by filing any suit in the competent court. On the other hand, the learned counsel for the respondents has submitted that it is well settled principle of law that the survey entry alone does neither create nor extinguish the title over the land and the respondents approved their possessory title over the land in question and as such the learned Additional Judge has rightly allowed the reference case and there is no need of any interference.

16. Having considered the submissions urged at the



Bar, going through the impugned judgment and the award and also appreciating the evidence available on the record, I am also of the opinion that the applicants/respondents have been able to prove their possessary title over the land bearing plot no. 281 under khata no. 62, area 5 acres of Village- Bhitiya which was acquired for the construction of Phulwariya Dam. The learned Additional Judge has rightly found the claimants entitled to receive the award. Further, the learned Additional Judge has rightly fixed valuation of the land in question @ of Rs. 300/- per decimal and as such the judgment and the award passed by the learned Additional District Judge, Nawadah requires no interference by this Court.

17. In the result, finding no merit in this appeal the same is hereby dismissed on contest but under the circumstances without costs.

(Jitendra Mohan Sharma, J)

Abhay/-

NAFR	N.A.F.R
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