

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.211 of 2017

1. Md. Aftab Ahmad Khan
2. Md. Ishteyaque Khan
3. Md. Muntasar Khan
4. Md. Iftexhar Alam Khan All S/o Late Yunus Khan R/o Mohalla - Rahamganj, Hospital Road, Police Station - Laheriyasarai, District - Darbhanga.
5. Sabiha Khatun W/o Md. Najim Khan D/o Late Yunus Khan R/o Vill. - Kaligaon Tole Kalyanpur, P.S. Singhwara, District Darbhanga.
6. Sufiya Khatun W/o Mumtaz Alam, D/o Late Yunus Khan R/o Mohalla - Rahamganj, Police Station - Laheriyasarai, District - Darbhanga.
7. Sagira Khatun W/o late Yunus Khan R/o Mohalla - Rahamganj, Police Station - Laheriyasarai, District - Darbhanga.

... .. Appellant/s

Versus

1. The State Of Bihar through Collector, Darbhanga
2. Additional Collector, Darbhanga.
3. Sub Divisional Officer, Sadar Darbhanga.
4. Circle Officer, Circle Darbhanga.
5. Regional Development Authority, Darbhanga.
6. Executive Engineer, Regional Development Authority, Darbhanga.
7. Land Acquisition Officer, Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S, S. Dwivedi, Sr, advocate
For the Respondent/s	:	Mr. Uday Shanker Sharan Singh, GP 19

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 16-07-2019

Heard both sides.

2. This Second Appeal is filed against the judgement and decree dated 23.03.2017 passed by the learned Additional District Judge-IV, Darbhanga in Title Appeal No. 54 of 2010 whereby the



learned Additional District Judge affirmed the judgement and decree dated 08.09.2010 passed by learned Sub Judge-II, Darbhanga in Title Suit No. 27 of 2002 and dismissed the appeal.

3. The plaintiffs are the appellants. The case of the plaintiffs/ appellants is that one Ghasi Khan had one son, namely, Shahbaj Khan. Shahbaj Khan got three sons, namely, Md. Yunus, Muslim Khan and Jahangir Khan. Muslim Khan got one son, Md. Shami, who was plaintiff No.2 but he died issueless and his name was expunged from the memo of appeal. Jahangir Khan was not made party in the suit. Md. Yunus, plaintiff No.1, also died and his legal heirs are the appellants. The plaintiffs filed the suit for declaration of title over the suit land described in schedule-1 of the plaint and for permanent injunction against the defendants/ respondents, the State of Bihar and other officials of the State of Bihar, not to interfere into possession of the plaintiffs over the suit land.

4. Further case of the plaintiffs is that entire suit land was recorded in the name of ancestor of the plaintiffs and ancestor of plaintiffs purchased land in the names of members of the family of the plaintiffs and on some portion of the land house of the plaintiffs was constructed whereas some portion of the land is used as Sahan. During the revisional survey R.S. Khatiyan was prepared



in the name of the plaintiffs finding them in peaceful possession of the land. On 25.11.1998 defendant No.6, the Executive Engineer, Regional Development Authority, Darbhanga came and tried to demolish the construction and structure standing on the land without giving any notice to the plaintiffs but the plaintiffs objected and filed CWJC No. 10710 of 1998 in the Patna High Court. The High Court vide order dated 03.12.1998 directed the plaintiffs to move before the Collector, Darbhanga but the Collector, Darbhanga did not consider the Title deeds of the plaintiffs and without getting scientifically measured the suit lands rejected the prayer of the plaintiffs on 19.11.2001. The plaintiffs again filed CWJC No. 16089 of 2001 in the High Court and the High Court vide order dated 15.02.2002 directed the opposite parties not to dispossess and not to demolish any construction of the plaintiffs till 15.03.2002 with a direction to the plaintiffs to file regular Title Suit. During the pendency of the case before the Collector, the defendants disclosed that the entire suit land mentioned in schedule-1 of the plaint was acquired but neither the plaintiffs nor their ancestors ever served any notice by the land Acquisition Department. The defendant No.6 came over plot No. 1182/1255 on 17.02.2002 and started digging the land for foundation of plinth.



5. The State of Bihar appeared and stated in the written statement that during the revisional survey, the survey authority has wrongly mentioned the suit land in the names of the plaintiffs in R. S. Khatiyar for suit lands except the land pertaining to plot No. 1225 as entire land lies in possession of Darbhanga Medical College & Hospital (DMCH) which itself lost separate identity and existence at the spot in view of amalgamation with other plots and DMCH is in peaceful possession over the entire land. The entire suit lands were acquired and gazette notification was also issued on 17.07.1946 and on 07.06.1948. The ancestors of the plaintiffs also received compensation amount from the concerned department. Altogether 74.04 acres of the lands were acquired and final gazette notification was issued on 07.04.1948. The map for acquisition of suit land of Block-A to Block-H was submitted in the court of District Judge, Darbhanga in reference case No. 11 to 27, 38 to 57, 64 to 89, 97 to 103, 105 to 139, 141, 150, 169, 171, 172, 199 to 202, 204, 205, 208 of the year 1950, 1951 and 1952 as Baldeo Prasad & Ors. v. the State of Bihar. The map for acquisition of land depicts entire area of acquisition and the plan for construction of buildings and roads of DMCH.

6. The trial court on the basis of pleadings framed issues, besides other issues, whether the plaintiffs have got exclusive title



and possession over the suit property and had the plaintiffs perfected their right, interest, title and possession over the suit land by principle of adverse possession.

7. The learned Sub Judge held that Shahbaj Khan, grand father of the appellants/ plaintiffs appeared in Land Acquisition case as well as Reference Case No. 172 and entire lands of the plaintiffs and others measuring 74 acres was acquired after issuance of notification under Section 4 of the Land Acquisition Act duly published in the year 1946. The learned trial court further held that Shahbaj Khan appeared in Reference case No. 172 pending before learned the then District Judge and raised objection with regard to the huts and brick built rooms standing on some portion of the suit land and received the amount of compensation for the acquisition of land and thereafter buildings and roads of DMCH were constructed which are still existing. The learned trial court held that the entire land is still in possession of the DMCH. The learned Appellate court after re-appreciating the evidence held that the lands of the plaintiffs/ appellants was duly acquired by the State of Bihar for expansion of DMCH and Shahbaj Khan received compensation and since then the acquired land is in possession of DMCH and dismissed the appeal.



8. Mr. Shashi Shekhar Dwivedi, the learned senior counsel for the appellants, submits that from perusal of the lands, mentioned in schedule-1 of the plaint, it would appear that Municipal plot No. 37618 was purchased in the name of Muslim Khan and Md. Yunus Khan. Plot Nos.24465, 24473 and 24474 were purchased in the name of Md. Yunus Khan and Md. Jahangir Khan. Md. Yunus Khan and Md. Jahangir Khan are sons of Shahbaj Khan but they were not noticed during the course of acquisition of land. It is submitted that plaintiffs are the Muslims and according to Muslim Personal Law the plaintiffs were required to be noticed before acquisition of the land. It is further submitted that houses of the plaintiffs are standing on the land said to have been acquired. Even during the revisional survey the records of rights were prepared with regard to the lands in the name of Yunus Khan, Jahangir Khan and Muslim Khan. The learned senior counsel for the appellants citing a full bench judgement of this court reported in **AIR, 1960, Patna, 382 (State of Bihar v. G. H. Grant & Anr.)** submitted that in a proceeding under the Land Acquisition Act, title of the land does not pass to the State as soon as award u/s 11 is made and filed u/s 12 but it is perfected only when possession is taken u/s 16 of the Act. It is submitted that even after acquisition of land the title did not pass to the DMCH as



there is nothing on record to show that possession of the land, as acquired, on which the house of the plaintiffs is standing, was taken over. This is the substantial question of law to be decided in this Second Appeal.

9. Having considered the submission of both sides and on perusal of the evidence, I find that it is admitted that Shahbaj Khan got three sons, namely, Md. Yunus, Muslim Khan and Jahangir Khan. Md. Yunus and Muslim Khan were plaintiffs. Jahangir Khan was not made party. Muslim Khan died during the pendency of the appeal and he was duly substituted by his legal heirs. It is also evident that in schedule-1 of the plaint many plots of C.S. Khata No. 37, 16/54, 1185, 1226 and 1227 were purchased in the name of Shahbaj Khan or his sons, Md. Muslim Khan, Md. Yunus Khan and Jahangir Khan through different sale deeds of the year 1938 and afterwards. One of the plots bearing plot No. 24467, area 10 Dhur 53 Dhurki was recorded in the name of Ghasi Khan in Municipal Khatian. Ghasi Khan was father of Shahbaj Khan.

10. The case of the plaintiffs is that they were not noticed but it appears that Shahbaj Khan, the grand father of the appellants, appeared in Land Acquisition case and Reference case No. 169, 172, which was for acquisition of entire land standing in the name of Ghasi Khan, Shahbaj Khan, Md. Yunus and Md.



Muslim. Shahbaj Khan also received compensation for the acquired land standing in the name of Most. Mariam and Timar, who did not raise objection. From perusal of order passed by the then District Judge, it is amply clear that Shahbaj Khan appeared in Land Acquisition case and raised objection only with regard to valuation of residential building made by Tati, 22 rooms of Foosh and brick built let out to the patients on rent. The order speaks about acquisition of 74 and odd acres of land in the vicinity of DMCH in the year 1945 and Shahbaj Khan received compensation with regard to acquisition of entire land, therefore, the case of the plaintiffs that no notice was issued is falsified. The plaintiffs claimed their house on a small piece of land pertaining to one of the plots, boundary of which was not clear. The learned Sub Judge as well as the first appellate court held that the map of block A to H submitted in the court of the then District Judge in reference case No. 11 to 27, 38 to 57, 64 to 89, 97 to 103, 105 to 139, 141, 150, 169, 171, 172, 199 to 202, 204, 205, 208 of the year 1950, 1951 and 1952 depicts the entire area of acquisition and plan for construction of the building and rooms of DMCH and after acquisition of the land roads and different buildings of DMCH were constructed.



11. It is apparent that plaintiffs have not pleaded anywhere in the plaint that after acquisition of land the defendants did not get possession of the entire acquired land and, therefore, the title of the plaintiffs/ appellants did not pass over to the DMCH after acquisition of the land. The learned senior counsel for the appellants raised this submission for the first time that after acquisition of the land possession was not handed over and this submission cannot be accepted for the first time in Second Appeal. The entire suit plots are included in block-A, block-E and block-G and boundary of each block is mentioned in acquisition map and it has been found that plot No. 1182/1225, corresponding to new plot No. 38115, are included in the acquired land with boundary description notified and published in Bihar Gazette and on plot No. 1182/ 1225 Viklang Bhawan was constructed by P.W.D. for expansion of DMCH covering area of 3 Katha 16 dhurs and plaintiffs could not claim that the aforesaid land or any part of the acquired land remained in their possession.

12. Having considered the facts aforesaid and discussions made above, I find that the question raised by the appellants have been considered by both the courts below and concurrent findings are recorded that Shahbaj Khan, the grand father of the appellants, being noticed appeared in Land



acquisition case and got compensation of entire acquired land and possession was taken over. Thereafter, buildings, roads of DMCH were built and constructed and thus the appellants did not prefect their title by way of adverse possession and the same does not require any interference. Accordingly, I find that no substantial question of law in this Second Appeal arises for consideration and the same is dismissed. Consequently, I.A. No. 2368 of 2018 is also dismissed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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