HIGH COURT OF TRIPURA
AGARTALA

LA App. 47 of 2018

Sri Mrinal Kanti Saha & Ors.

Versus

The Land Acquisition Collector & Anr.

For Petitioner(s)	: Mr. DK Daschoudhury, Adv.
For Respondent(s)	: Mr. D Bhattacharjee, GA Mr. KK Pal, Adv.
Whether fit for reporting	: **YES**

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER (ORAL)

02.03.2020

Heard Mr. DK Daschoudhury, learned counsel appearing for the appellants as well as Mr. D Bhattacharjee, learned GA appearing for the respondent No.1 - LA Collector and Mr. KK Pal, learned counsel appearing for the respondent No.2.

2. By means of this appeal under Section 54 of the Land Acquisition Act, 1894 the appellants who are the legal heirs of the person who pressed for the reference under Section 30 of the LA Act, for purpose of apportionment of the award made by the Land Acquisition Judge by his determination as reflected in the order dated 04.10.2012. An award to the extent of Rs.6,34,916/- was made considering the damage that the owner of the land was subjected to, for the said acquisition for improvement of the road from Ratanmani Setu to Revenue Dak Banglow under Belonia Nagar Panchayet.

3. There is no dispute that by the notification issued under Section 17 read with Section 4 of the Land Acquisition Act, 1894 issued on 20.04.2010 the process for compulsory acquisition on urgency was initiated and thereafter, the due declaration was published. That followed by the inquiry under Section 9 of the LA Act to hear the interested person. After hearing the interested persons, the Land Acquisition Collector made his award for an amount of Rs.5,87,125/-. Later on, further interest was added to make it to the sum of Rs.6,34,916/-.

4. There is no dispute that land measuring 0.103 acres of *Bagan* class pertaining to Khatian 1168 of Mouja DBC Nagar and comprised in plot No. 1938/P was acquired for the said purpose. Sri Nani Gopal Saha, predecessor of the present appellants claimed the entire money, according to Mr. Daschoudhury, learned counsel appearing for the appellants, on the basis of his adverse possession from 1962 on that land. On the other hand, Mr. Anil Chandra Saha, the respondent No.2 in the present appeal claimed the entire money on the basis of title.

5. The Land Acquisition Collector found it to be a dispute relating to title and he found it hard and difficult to cause the apportionment of the amount. As a result, in the background of the emerging dispute, he referred the matter under Section 30 of the Land Acquisition Act, 1894 for determination by the Land Acquisition Judge. The said reference being LA(Ref)18/2013 has been decided by the Land

Acquisition Judge, South Tripura, Belonia by the impugned order dated 31.05.2018. For purpose of reference, the entire text of the very short order is extracted hereunder:

> **"31.05.18**
>
> **Learned counsel for the parties are present.**
>
> **Received a report from the L.A. Collector in pursuance to order dated,06.02.18.**
>
> **The L.A. Collector by his letter dated, 23.04.18 has informed this Court that 50% of the awarded money was paid to Nani Gopal Saha in the year 2010 and rest 50% of the amount was paid to Anil Chandra Saha in the year 2013.**
>
> **Thus, the jurisdiction of this court gets invoked if L.A. Collector failed to decide who is entitled to the award or what may be the apportionment thereof. In the case, at hand, L.A. Collector has decided and has already paid the award in equal share to the 1st party-petitioner and 2nd party-petitioner. So no leave remains for adjudication by the L.A. Court.**
>
> **If any party is aggrieved, they may take the matter in appropriate civil court.**
>
> **The L.A. Court is not supposed to exercise the jurisdiction of regular civil court.**
>
> **The case stands disposed of."**

6. Mr. Daschoudhury, learned counsel has submitted that the said order is entirely misconceived and bad for non-exercise of the jurisdiction conferred upon the court of Land Acquisition Judge under Section 30 of the LA Act.

7. Section 30 of the LA Act provides that when the amount of compensation has been settled under Section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute for the decision of the Court.

8. According to this Court, even if the wrong apportionment is made that can be a dispute under Section 30 of the LA Act. Therefore, the finding on the basis of which the reference has been closed is totally unacceptable.

9. The case of the referring claimant, namely, Nani Gopal Saha, who is now represented by his legal heirs [the appellants herein] is that he was adversely possessing the land since 1962 till the acquisition. For this purpose, when Mr. Daschoudhury, learned counsel was strenuously arguing before this Court that the adverse possession is well proved on record, this Court had occasion to look into the pleadings which were filed in the form of the claim statement after expiry of Nani Gopal Saha by his legal heirs. In the claim statement, it has been admitted by the legal heirs that at the time of making payment of 50% of the awarded money was paid to Nani Gopal Saha.

10. That apart, in para 8, the pleadings which are available and appear to be relevant, read as under:

> **"8. That, prior to 1962 Nani Gopal Saha now deceased the predecessor of the substituted referring claimants has been possession the all those land of Hal plot no-1938 corresponding to Sabek plot no-2247 continuously claiming himself as a true and lawful owner of the said land. Nani Gopal Saha constructed bricks wall on the boundary of the said land and continued constructed physical possession of the said land denying the title of any other person. Though the land was transferred by the unregistered deed on elapse of stipulated period the right and title of the Anil Chandra Saha S/O-Roy Chand Saha has been extinguished. In the year 1979 land measuring 0.014 acres from Sabek Plot no.-2247 was acquired for extension of road vide notification no-F.21(ii)-Acq/REV/79 dated Agartala 1st August 1979. At that time, the Ld. L.A. Collector paid the entire awarded money of said acquisition to Nani Gopal Saha considering him as the only interested person of the land of Sabek Plot No-2247 i.e. Hal Plot no-1938. So the substituted claimants are only interested person and occupier of the acquired land and entitled to the entire awarded money."**
>
> **[Emphasis added]**

11. The evidence was filed by one of the appellants, namely, Mrinal Kanti Saha as PW1 to support the case of the appellants and it has been stated that though the land was

transferred by an unregistered deed but on elapse of stipulated period, the right, title & interest of Anil Chandra Saha, son of Roy Chand Saha has been extinguished. This is the whole evidence that is available on the record.

12. This court is constrained to observe that on the basis of these pleadings and the evidence, no court of the competent jurisdiction can declare the title by prescription on adverse possession. The fundamentals that have to be proved for claiming adverse possession are that the adversity has been demonstrated to the true owner and that on and from a particular day, the true owner was never allowed to enjoy, enter or claim any right over that land for which such adverse claim has arisen.

13. In this case, this court does not find any such material at all. Most interestingly, the claim is structured on the basis of an unregistered sale deed by which Nani Gopal Saha has claimed the title. When someone claims the title on an unregistered deed, the transfer becomes immediately invalid and such invalid transaction cannot be treated as adversary towards the true owner.

14. Having regard to this, while this court is interfering with the finding of the LA Judge, is further holding that the appellants have failed to prove that their predecessor, namely, Nani Gopal Saha was in adverse possession of the acquired land and as such, the apportionment as directed by the Land Acquisition Collector was grossly illegal and it was based on no law or reason.

15. Even if, Nani Gopal Saha was a permissive possessor, his claim should have been confined to the structures and anything that he has raised on the said land. Even the usufruct can be assessed in favour of the possessor.

16. In view of what has been observed above, it is declared that Anil Chandra Saha is the true owner of the land and is entitled to the compensation save and except what the appellants are entitled to as the mere possessors. In terms of the above, the reference is disposed of. Award be made accordingly.

17. It has appeared that 50% of the awarded amount has been taken by Nani Gopal Saha, the predecessor of the appellants. It is left to the respondent No.2, whether he would recover that money or not, in accordance with law.

The appeal accordingly stands disposed of.

JUDGE

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