

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 478 OF 2014
WITH
FIRST APPEAL NO. 441 OF 2015

APPELLANT: Hukumchand s/o Babulal Sethi,
Aged Major, Occupation: Business,
Resident of Kiradpura, Sadar, Nagpur
(Original Res. No.2).

...VERSUS...

- RESPONDENTS**
1. The Chief General Manager,
Western Coalfields Limited,
Nagpur Area, Tehsil and District Nagpur,
having its office at Civil Lines, Nagpur.
(Original Applicant)
 2. Smt. Manisha wd/o Prakash Patil,
Aged about 40 years, Occupation:
Household; (Original Resp. No.1 a)
 3. Master Chetan s/o Prakash Patil,
Aged about 11 years, through his Mother
and Natural guardian i.e. the respondent
No.2; (Original Resp. No.1 b)

Both the respondent Nos. 2 and 3 are
residents of Bada Bina, Teshil-Kamthi,
District Nagpur.

4. Govind s/o Kisanji Randive,
Aged Major, Occupation: Service resident
of New Bina, Bhanegaon, Tahsil Saoner,
District Nagpur (Original Resp. No.3)

FIRST APPEAL NO. 441 OF 2015
WITH
FIRST APPEAL NO. 478 OF 2014

- APPELLANTS:** 1. Smt. Manisha wd/o Prakash Patil,
Ori. Respd., Aged about: 40 Years,
No-1-A. On RA. Occupation: Household,
R/o: Bada Bina, Tah. Kamptee,
District Nagpur.
- Org. Respondent.** 2. Master Chetan s/o Prakash Patil,
No-1-B. Aged about: 11 Years, through his mother
and natural Guardian i.e. Appellant No.1.

...VERSUS...

- RESPONDENTS** 1. The Chief General Manager,
Org. Applicant Western Coalfields Limited,
On R.A. Nagpur Area, Tah. & District: Nagpur,
having Office at Civil Lines, Nagpur.
- Org. Respd.** 2. Hukumchand s/o Babulal Sethi,
No.2. Aged Major, Occupation: Business,
R/o Khiradpura, Sadar, Nagpur.
- Ori. Respd.** 3. Govind s/o Kisanji Randive,
No.3. Aged: Major,
Occupation : Service,
R/o New Bina, Bhanegaon, Tah. Saoner,
District Nagpur.

Mr P.A. Abhyankar, counsel for the appellant.
Mr C.S. Samudra, counsel for the respondent No.1.
Mr C.N. Deshpande, counsel for the respondent No.4.

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CORAM : URMILA JOSHI-PHALKE, J.
DATE OF RESERVE : 09/03/2023
DATE OF DECISION : 06 /06/2023

ORAL JUDGMENT :

1. Both the appeals are preferred against the judgment and order passed by the Special Tribunal constituted under Section 14 (2) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (for short 'the Act of 1957') dated 04/04/2014, by which the original Non-applicant No.3 was declared to be rightful owner to receive the amount of compensation.

2. The brief facts which are necessary for the disposal of the appeals are as under:

The Government of India vide notification dated 11/07/1998 under Sections 4 and 9 dated 29/05/2004 of the Act, 1957 acquired the land Gat No. 160/2, admeasuring 1 HR of village Bina, Tahsil Saoner for the New Bina Block Project. The land was recorded in Revenue Record in the name of Prakash Deorao Patil. The compensation amount of Rs.3,31,682.15/- was determined and notice was issued but nobody turned up to receive the compensation. Therefore, Western Coal Field Limited(for short 'WCL') deposited the said amount in the Special Tribunal on 27/08/2008. As the Non-applicant Nos.2 and 3 namely Hukumchand Babulal Sethi and Govind Kisanji Randive also claimed the right, the WCL has filed an application to determine

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the interested person to whom compensation can be disbursed.

3. The notice issued to original Non-applicant No.1 Prakash Deorao Patil was received unserved with endorsement as dead. The applicant has not brought on record, the legal heirs of the deceased non-applicant. As the applicant has not taken any steps to serve the non-applicant Nos. 2 and 3. The matter was kept on dormant file. On 11/03/2013, the non-applicant No.3 approached to the Special Tribunal. The legal heirs of the deceased non-applicant No.1 – Prakash Deorao Patil are also brought on record and notices were issued to all the Non-applicants. The non-applicant Nos.1(a) and 1(b) who are the legal heirs of the Prakash Deorao Patil filed their reply and contended that the Civil Judge, Junior Division, Nagpur passed a decree in Special Civil Suit No.172/1995 for specific performance of the contract and as per this decree, non-applicant No.3 is entitled to the possession of the said land but not entitled for the compensation amount. It is further contended that Execution Case No. 23/2012 filed by Non-applicant No.3 against them is still pending before the Civil Judge, Junior Division, Kamptee, in which Non-applicant No.3 claimed possession of the acquired land. According to them, they are entitled for the compensation. They have also filed the Writ Petition No.1555/2008 before this Court and therefore, the decree passed in favour of non-applicant No.3 has not become final.

4. Non-applicant No.2 has filed Pursis at Exhibit No.26 mentioning therein that he is withdrawing his claim and all the right

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and interest in the acquired land in favour of Non-applicant Nos. 1(a) and 1(b) and they are entitled to receive the compensation amount.

5. The non-applicant No.3 contested the application by filing a reply, on the ground that on 31/07/1994 Shri Prakash Deorao Patil executed an agreement in his favour for the purchase of the acquired land. Shri Prakash Deorao Patil, subsequently refused to execute the sale deed, hence he had filed Special Civil Suit No. 172/1995 against him in the Court of the Civil Judge, Senior Division, Nagpur, and the suit was decreed on 09/07/1996. The non-applicant No.3 filed Special Darkhast No.30/1997 against deceased Prakash Patil to execute the sale deed. As per the decree of the Court, Shri Prakash Patil failed to execute the sale-deed, therefore the Civil Judge, Senior Division, Nagpur by order dated 14/10/1998 had executed the sale deed in his favour in respect of the acquired land. On 07/01/2005, Shri Prakash Patil died, and the Non-applicant Nos.1(a) and 1(b) who are legal heirs and filed M.J.C. No. 304/1998 for setting aside ex-parte decree which was rejected. They challenged the dismissal of M.J.C. No. 304/1998 by filing another M.J.C. No.189/2002 before the District Court, but the same was also rejected. Thereafter, they have challenged the orders to the Civil Judge, Senior Division, Nagpur passed in M.J.C. by filing Writ Petition No. 3554/2003 and Writ Petition No.1555/2008. This Court was pleased to dismiss both the petitions. The non-applicant No.3 submits that on the basis of the sale-deed dated 14/10/1998 executed by the Competent Court on

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behalf of the Original Non-applicant No.1, he became lawful owner of the acquired land and hence, he is the rightful person to get the compensation amount in respect of the acquired land.

6. The Special Tribunal has recorded the relevant evidence and after perusal of the entire record please to hold that non-applicant No.3- Govind Kisanji Randive is the rightful owner to claim the compensation.

7. Being aggrieved and dissatisfied with the judgment and order passed by the Special Tribunal, present appeals are preferred by the original Non-applicant No.2- Hukumchand Babulal Sethi and Non-applicant Nos. 1 and 2 Manisha Prakash Patil and Chetan Prakash Patil on the ground that after issuance of notification under Section 9, the land in dispute was possessed over by the Central Government, therefore, Non-applicant No.3 has no right to claim the compensation. It is further contended by the legal heirs of Prakash Patil that the agreement of respondent No.3 was subsequent to the sale-deed to the non-applicant No.2 and therefore, neither the agreement nor the decree of the Court or the subsequent sale-deed could convene any title to the respondent No.3. Therefore, the respondent No.3 is not entitled for any compensation. The appellant Hukumchand Babulal Sethi also raised the ground that the sale-deed was executed in favour of respondent No.3 subsequent to the sale-deed executed in his favour and therefore, respondent No.3 is not entitled for any right as the sale-deed executed in his favour is not legal and liable to be set

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aside.

8. Heard learned counsel Mr P.A. Abhyankar for the appellant in both the appeals. He reiterated the contention that the appeal is against the order to the Special Tribunal, the appellant- Hukumchand Babulal Sethi is the purchaser of the property, and respondent Nos.1(a) and 1(b) are the wife's son and original owner, respondent No.4 claimed to be the owner on the basis of the decree of the Court. The Section 4 notification was issued on 11/7/1998, and notification under Section 9 was issued on 29/05/2004. As per contention of respondent Nos.1(a) and 1(b) is that from the date of execution of the notification, all the rights and interest in acquired land have been vested in the Central Government and therefore, now the non-applicant No.3 cannot claim possession of the acquired land, as he lost the rights, title and interest in the property. It is further contention of the appellants that the sale deed executed by the Court on their behalf in favour of the Non-applicant No.3 is illegal and bad-in-law since it was executed after the publication of the notification under Section 9 of the Act, 1957. It is submitted by the learned counsel that admittedly the appellant- Hukumchand filed a Pursis and relinquished his right in favour of the appellants in Appeal No. 441/2015. Therefore, the original Non-applicant Nos.1(a) and 1(b) who are the appellants in Appeal No. 441/2015 are entitled to receive the compensation.

9. Learned counsel Mr C.S. Samudra for respondent No.1 and Mr C.N. Deshpande, counsel for respondent No.4 supported

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the judgment of the Special Tribunal and submitted that no interference is called for.

10. Undisputedly, the original Non-applicant No.1 deceased Prakash Patil was the owner of the acquired land and after his death, Non-applicant Nos.1(a) and 1(b) are representing him as his legal heirs. On 31/07/1994, the original non-applicant No.3 agreed to purchase the acquired land and there was an agreement between them. Subsequently, the deceased Prakash Patil refused to execute the sale deed. As per the contention of the appellant /Hukumchand, the sale deed was executed in his favour by Prakash Patil on 18/05/1994 for valuable consideration of Rs. 83,500/-. Thus, he became the owner of the entire land w.e.f. 18/05/1994. It is undisputed that the original non-applicant No.3 had filed Special Civil Suit No. 172/1995 for specific performance of the contract and the suit was decreed against the original Non-applicant No.1. After passing of the decree, the non-applicant No.1 Prakash Patil failed to execute the sale-deed and therefore, execution proceeding bearing No. 30/1997 was preferred and on 14/10/1998 the non-applicant Nos.1(a) and 1(b) filed MJC No. 304/1998 for setting aside ex-parte decree was filed the same MJC was rejected. The original Non-applicant Nos.1(a) and 1(b) challenged the order of the Civil Judge Senior Division by filing MJC No. 189/2002 for restoration of MJC No. 304/1998, it was also dismissed. Thereafter, they both have challenged the order before this Court by filing Writ Petition Nos. 3554/2003 and 1555/2008. This Court has dismissed both the writ petitions. Thus, now no proceeding is pending before

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any Court. Thus it is apparent that in view of the decree passed in Special Civil Suit No. 172/1995, the sale-deed was executed by the Court in favour of the original Non-applicant No.3.

11. The only issue before the Special Tribunal was, who is the rightful person or the interested person to get compensation deposited before the Tribunal. The Special Tribunal had considered the provisions of the Act of 1957. On the basis of the evidence on record, and in the light of the facts that the sale-deed was executed in favour of Non-applicant No.3, the Special Tribunal come to the conclusion that original Non-applicant No.3 is the rightful person/interested person to claim the compensation.

12. It is vehemently submitted that in view of Section 10 of the Act of 1957 as soon as the notification under Section 9 has been issued all the rights in or over the land vest absolutely in the Central Government and therefore, sale-deed executed by the Court in favour of the original Non-applicant No.3 is illegal and bad-in-law since it was executed after the publication of the notification under Section 9 of the Act of 1957. From the record, it reveals that notification under Section 9 has been published on 29/05/2004 whereas the sale deed was executed on 14/10/1998 which is prior to the date of publication of notification under Section 9 of the Act of 1957.

13. Another contention of the appellant was that from the date of issuance of notification, all the rights and interest in acquired land has been vested in the Central Government and therefore, now

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respondent No.3 cannot claim possession of the acquired land as he lost all the rights, title and interest in the property after publication of the notification.

14. Admittedly, the non-applicant No.3 had filed Special Civil Suit No. 172/1995 for specific performance of the contract and the said suit was decreed against the original non-applicant No.1 i.e. Prakash Patil. After passing of the decree, as no sale deed was executed, original Non-applicant No.3 preferred execution bearing No. 30/1997 on 14/10/1998. The judgment and decree passed by the learned Civil Judge, Senior Division, Nagpur was challenged by the original Non-applicant Nos.1(a) and 1(b) by filing MJC No. 304/1998 for setting aside the ex-parte decree, which was rejected and the said order was maintained upto this Court. The Writ Petition Nos.3554/2003 and 1555/2008 were dismissed. Thus, the judgment and decree passed by the learned Civil Judge, Senior Division, Nagpur attains the finality. The learned Civil Judge, Senior Division, Nagpur directed the original Non-applicant No.1 to execute the sale-deed in favour of the non-applicant No.3 as he failed to execute the sale-deed. Hence, the learned Civil Judge, Senior Division, Nagpur had executed sale-deed in favour of the non-applicant No.3. Admittedly, the said execution of sale-deed is not challenged by both the appellants. As already observed that the decree of the Court of Civil Judge, Senior Division, Nagpur attains finality as all the proceedings filed against the said decree was dismissed up till this Court. Thus, on the basis of the available record, it is apparent that respondent No.3 became

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the rightful owner of the land by virtue of a sale-deed dated 14/10/1998 executed in his favour. As already observed that the decree passed by the Civil Judge, Senior Division, Nagpur is neither challenged by the Non-applicant Nos.1(a) and 1(b) nor by non-applicant No.2 before any Competent Court, and therefore, it attains finality. As the sale-deed was executed in favour of respondent No.3 on 14/10/1998 before the issuance of notification under Section 9, therefore, respondent No.3 became the rightful owner to claim the compensation. So far as the appellant namely Hukumchand Babulal Sethi is concerned, he has filed the Pursis before the Special Tribunal contending that he is relinquishing his right in favour of the Non-applicant Nos.1 (a) and 1(b). In fact, he has also not challenged the judgment and decree passed by the Civil Judge, Senior Division, Nagpur. This Court has already observed in Writ Petition No. 3554/2003 that the petitioner has not been diligent, if eventually the decree is set aside, the petitioner will be entitled to restoration of the property and no error of law apparent on the face of the perversity and dismissed the petition. In Writ Petition No. 1555/2008, again this Court has observed that sale-deed is already executed through Court on 14/10/1998 and certain important rights have been accrued in favour of the decree holder, and if such rights were set aside, only because of the negligence of the debtor, there would be no end to the lis. The sale-deed having been executed, this Court held that the application made thereafter for setting aside ex-parte judgment and decree has no substance.

15. Thus, in view of the peculiar facts and circumstances

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that respondent No.3 became the owner of the acquired property on the basis of the judgment and decree of the learned Civil Judge, Senior Division, Nagpur, and said judgment and decree attains the finality. The Special Tribunal held that the respondent No.3 is entitled to receive the compensation is legal and proper one. No perversity appears in the said order, therefore, no interference is called for. In fact, the appellant in appeal No. 478/2014 who has already relinquished his right, has no locus to challenge the said order. The appellants in Appeal No. 441/2015 also failed to prove that they are the persons interested to claim the compensation, in view of Section 14 (2) of the Act of 1957. In view of Section 14(5), the Tribunal shall after hearing the dispute make an award determining the amount of compensation which appears to it to be just and specify the persons or persons to whom the compensation shall be paid. And in making the award, the Tribunal shall have regard to the circumstance of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined, in so far as the said provisions of any of them may be applicable.

16. Here in the present case, in view of the judgment and decree passed in favour of respondent No.3 which attains finality, the tribunal hold that respondent No.3 is the rightful owner to claim the compensation and needs no interference.

Hence, in view of above discussion, both appeals have no merits and are liable to be **dismissed**. Therefore, I pass the

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following order:

First Appeal Nos 478/2014 and 441/2015 are **dismissed**
with no order as to costs.

JUDGE

RKN