

Ashok Kumar Vs. State of Jharkhand and Ors

Ashok Kumar Vs. State of Jharkhand and Ors

SooperKanoon Citation : sooperkanoon.com/109299

Court : Jharkhand

Decided On : Jan-25-2017

Appellant : Ashok Kumar

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (C) No. 2093 of 2009
Ashok Kumar Petitioner Versus

1. The State of Jharkhand
2. The Secretary, Irrigation Department, Jharkhand, Ranchi
3. The Deputy Commissioner, Garhwa
4. The Executive Engineer, Minor Irrigation Department, Garhwa
5. Ashok Kumar
6. Pradeep Kumar Respondents. CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : Mr. Pravin Kumar Rana, Adv. For the RespondentState : Mr. Vineet Prakash, J.C to S.C (L&C) For the Respondent nos. 5 & 6 : Mr. Rahul Gupta, Adv. 17/25.1.2017 Heard learned counsel for the parties. Petitioner and respondent no. 6 both of whom claim to be the son of Badri Vishal Sao, an awardee in Land Acquisition Case nos. 1/89, 2/89, 3/89 and 4/89,

award dated 30th August, 1990/15th September, 1990, are before this Court in the present writ application. Petitioner has sought compensation in respect of land acquired measuring an area 0.69 Acres of Khata nos. 1 and 2, Plot nos. 17, 41 and 40 measuring an area 1.90 Acres of Khata nos. 2, 27 and 37, Plot no. 586/1, 307, measuring an Area 0.07 Acres of Khata no. 72, plot no. 309P and measuring an area 35 decimals of Khata no. 55, Plot no. 575 of Village Chana Kallam said to be the subject matter of the acquisition proceeding. After the decision of Land Acquisition Judge vide order dated 30th August, 1990, Badri Vishal Sao father of the petitioner preferred first appeal before this Court being First Appeal nos. 30, 31 and 32 of 1998(R), which was dismissed vide order dated 19th October, 2001 passed by learned Single Judge of this Court observing as follows: So, in my opinion, there is no reason why application for obtaining certified copies, instead of having been filed immediately after the impugned judgment was passed, was filed after more than 7 years. In order to substantiate his claim for enhancement of compensation amount, appellant failed to produce any sale deed of the relevant period and adduced only oral evidence.

2. However, the court below enhanced the compensation amount, fixed by the Land Acquisition Officer, suitably. As such, it appears that the appellant was not very serious in the matter from the very beginning. The appellant has miserably failed to explain the inordinate delay of more than 7 years. Hence, the petitions for condonation of delay are rejected. Consequently, memorandum of these three appeals [F.A. Nos. 30, 31 and 32 of 1998(R)] stand rejected, as barred by time. The execution cases were filed in 2005 being Execution Case nos. 2, 3, 4, 5 of 2005 thereafter before the court of SubJudge, 1, Gharwa. This was apparently beyond 12 years of limitation period for execution of decree, which was prepared in land acquisition cases in the year 1990. Surprisingly, though the awardee, Badri Vishal Sao was alive, no execution proceedings were initiated by him rather by the present petitioner claiming to be his legal heir. It has also been recorded in the impugned order passed in Execution cases dated 11th December, 2008 that decreeholder, Badri Vishal Sao appeared on 19th November, 2007 and said that in Execution Case nos. 2, 3 and 4 of 2005, he did not give any power of attorney to file a case to petitioner, Ashok Kumar, who is the son of Badri Vishal Sao. It was stated that he has two sons, namely, Ashok Kumar and Pradeep Kumar. Learned

Sub Judge, Garhwa after taking note of these facts and dismissal of first appeals as barred by time also observed that Hon'ble High Court has refused to give condonation of delay for filing of execution case. Appeal is therefore barred in time by the order of Hon'ble Court. The execution cases were dropped. Learned counsel for the petitioner, however, has not been able to substantiate the plea that execution cases filed after 15 years of the award could have been entertained by learned Executing Court though the period of limitation for filing such execution case is 12 years. The Respondent State has taken the following stand in their counter affidavit filed on 13.08.2012. Since L.A. Case No. 01/89 was filed for enhancement of the compensation amount with respect to 69 decimals of lands acquired, which belonged to the petitioner's father, the learned

3. Judge has valued the land @ Rs. 5,000/ and has passed order for payment of additional compensation @ 30% with interest after adjusting the amount of compensation already paid. However, it appears that the Execution Case No. 2/2005 was filed for payment of compensation with respect to the order passed in L.A. Case No. 1/89, wherein the petitioner has valued the land @ Rs. 20,700/ and has calculated the compensation amount accordingly, which is wrong and incorrect besides being exorbitant. In L.A Case No. 2/89 the learned Judge enhanced the amount of compensation already paid to the applicant at a flat rate of 30% but in Execution Case No. 3/2005 the land has been valued @ Rs. 57,000/ and the compensation amount has been calculated accordingly. However, as per the order passed in L.A. Case No. 2/89 the valuation of the land should be 130% of the compensation paid i.e. $34292 \times 130\% = 44580$. However compensation along with interest should have been calculated on this amount. Similarly in L.A Case No. 3/89, learned Judge enhanced the amount of compensation already paid to the applicant at a flat rate of 30% but in Execution Case No. 4/2005, the land has been valued at Rs. 2100 / and compensation amount has been calculated accordingly. However, as per the order passed in L. A. Case No. 3/89, valuation of the land should be 130% of the compensation paid i.e. $1221.80 \times 130\% = 1588.30$ and compensation along with interest should be calculated on this amount. Similarly in L.A Case No. 4/89 learned Judge has enhanced the amount of compensation already paid to the applicant at a flat rate of 30% but in Execution Case No. 5/2005, land has been valued at Rs. 10500/ and compensation amount

was calculated according but by the order passed in L.S Case No. 4/89, valuation of the land should be 130% of the compensation amount paid i.e. $4581.90 \times 130\% = 5956.47$.

19. That with regard to the statements made in para17 of the writ petition under reply, it is stated and submitted that the amount of compensation calculated according to Annexure4, 4/1, 4/2 and 4/3 could not be accepted and the answering respondents deny the same

20. That with regard to the statements made in para18 of the writ petition under reply, it is stated and submitted that the respondents have taken necessary steps for compliance of the order dated 27.9.2007 passed by learned Subordinate Judge, Garhwa, which is evident from letter no. 59 dated 30.10.2007 (Annexure6 to the writ petition).

21. That with regard to the statements made in para21 to 24 of the writ petition under reply, it is stated and submitted that when actual facts were brought to the knowledge to the learned court below, execution cases filed by the petitioner were rightly dismissed as it was considered by the learned court below that power of attorney filed by the petitioner to contest the execution case on behalf of his father has been objected by his father himself and appeal filed for enhancement of compensation has already been dismissed by the Hon'ble High Court and this fact was never brought to the knowledge of the Hon'ble Court. Therefore, the petitioner's claim has no legs to stand and he cannot claim any compensation as he had not filed the execution cases bonafide and relevant and material facts were suppressed and concealed from the Hon'ble Court and above all his authority to file execution has been challenged by his father himself and after a lapse of so many year, when no steps were taken for getting payment of even decretal amount , it is baseless that petitioner is suffering any loss.

22. That with regard to the statements made in para25 4. and 26 of the writ petition under reply, it is stated and submitted that no loss has been caused to the petitioner neither any of his right has been infringed as any award was never passed in his favour and action of the respondent is according to law who has taken every step to comply the Court's order and after the dismissal of execution

cases, the respondent is not under any obligation to pay any amount to the petitioner. The father of the petitioner and private respondent has, however, died on 8th June, 2016 as per statement made by petitioner in I.A. No. 6614 of 2016. As noted hereinabove, there are serious questions whether petitioner had locus to execute the award passed in L.A Cases on 30th August, 1990/15th September, 1990 on behalf of the awardeefather, who had appeared before the Executing Court and made objection to the same as well. There are issues relating to limitation in filing the execution cases on the part of the petitioner after 15 years of the award. These issues also relating to questions of fact, have not been properly answered by the petitioner. The RespondentState after explaining its stand on merit has also questioned the claim of the petitioner in executing the award despite serious objection on behalf of his father. In the totality of facts and circumstances discussed hereinabove, petitioner has failed to support its challenge to the orders passed in execution cases dated 11th December, 2008 on these counts. Whether the awarded amount has been fully released in favour of awardee or not, is also however not evident from the stand of RespondentState. Counsel for the RespondentState submits that on an earlier date on being observed the respondent authorities were asked to furnish further instruction in the matter, which, however, has not been furnished. The maze of facts presented in a wholly disjointed manner in the pleadings of the writ petition, also do not persuade the Court to exercise its jurisdiction under Article 227 of the Constitution of India as prayed for. Petitioner have failed to assail the impugned orders on any sustainable grounds. However, if the awarded amount has not been fully disbursed to the awardee, his legal heirs, may make a representation before competent authority/District Land Acquisition Officer supported by proper 5. succession certificate. The competent authority may look into the matter in accordance with law. Accordingly, the writ petition is disposed of without interfering in the impugned orders. (Aparesh Kumar Singh,J) jk