

Mahendra Prasad and Etc. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jun-09-2003

Judge : Aftab Alam, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 20, Rule 18 - Order 39, Rules 1 and 2; [Land Acquisition Act, 1894](#) - Sections 30

Appeal No. : C.W.J.C. Nos. 2793 and 2880 of 2002

Appellant : Mahendra Prasad and Etc.

Respondent : State of Bihar and ors.

Advocate for Def. : S.S. Nayar Husain, Sr. Adv. and A. Haidar, Adv., Ram Balak Mahto, Sr. Adv., Sanjay Kumar and Binod Kumar, Adv. for Respondent No. 4

Advocate for Pet/Ap. : D.K. Sinha, Sr. Adv., Anil Kumar Singh, Adv. for No. 1 and Santosh Kumar Singh, Adv.

Disposition : Petition dismissed

Prior history : Aftab Alam, J. 1. Mahendra Prasad, the sole petitioner in C. W. J. C. No. 2880 of 2002 filed a partition suit being Partition Suit No. 64 of 1989 in the Court of Subordinate Judge IV, Bihar Sharif (Nalanda) for partition of the family properties, Basudeo Prasad, the sole petitioner in C. W. J. C. No. 2793 of 2002, is one of the defendants in that suit. In the present dispute, they are together against Raghunandan Prasad, defendant No. 1 in the suit and a common respondent in

both the writ pe

Judgement :

Aftab Alam, J.

1. Mahendra Prasad, the sole petitioner in C. W. J. C. No. 2880 of 2002 filed a partition suit being Partition Suit No. 64 of 1989 in the Court of Subordinate Judge IV, Bihar Sharif (Nalanda) for partition of the family properties, Basudeo Prasad, the sole petitioner in C. W. J. C. No. 2793 of 2002, is one of the defendants in that suit. In the present dispute, they are together against Raghunandan Prasad, defendant No. 1 in the suit and a common respondent in both the writ petitions. The present dispute has arisen, during the pendency of the suit, as a part of the suit lands has been acquired by the Government under the Land Acquisition Act, the public purpose being construction of an Ordinance Factory at Rajgir. In the notices issued in the land acquisition proceeding and in the award prepared for payment of compensation to land holders the area of the acquired land in the hands of Raghunandan Prasad is shown far in excess of what is his share, according to the writ petitioners, in the undivided family property. An attempt was, therefore, made to get the payment of the compensation money stayed till the disposal of the title suit. That attempt being unsuccessful Mahendra Prasad filed a petition for making a reference to the Court for apportionment of the amount of compensation under Section 30 of the Land Acquisition Act. The Collector by order, dated 13-2-2002 passed in Objection Case No. 6/50, Basudeo Prasad L. A. 6/2000 rejected the plea for reference. This writ petition is filed challenging that order.

2. In my opinion it was quite misconceived on the part of the writ petitioner to try to have a reference made to the Court under Section 30 of the Act in regard to any dispute over apportionment of the compensation amount. Having regard to the pendency of the partition suit between the parties in which the acquired land was also part of the suit lands, a reference under Section 30 of the Act would amount to duplication of judicial proceedings and would open the possibility of inconsistent orders being passed by the Courts. The untenability of the petitioner's claim for

reference under Section 30 of the Act would be further evident if one takes note of certain facts that are not in dispute.

3. According to the plaint the total area of the land of which partition is prayed for is slightly over 42 acres. It is the case of the plaintiff (Petitioner in C. W. J. C. No. 2880 of 2002) that Raghunandan Prasad is entitled to 22.5 paise (that is to say, 22.5%) share in the suit properties. Thus, according to the plaintiff's own case the share of Raghunandan Prasad in the suit land would be not less than 9.45 acres. Out of the suit lands 13.31 acres have gone into acquisition. In the notices issued under Section 9 of the Act (Annexure 2 series) an area, of 1.53 acre is shown in the name of Basudeo Prasad (petitioner in C. W. J. C. No. 2793 of 2002); an area of 3.07 acres in the name of Mahendra Prasad (plaintiff in the partition suit and petitioner in C. W. J. C. No. 2880 of 2002) and the balance area of 8.71 acres is shown in the notice issued in the name of Raghunandan Prasad. According to the two petitioners, Raghunandan Prasad was not entitled to more than 22.5% share in the undivided family lands and hence, his share in the 13.31 acres of acquired land would be 2.99 acres; as against this, he was getting compensation for 8.71 acres, that is, far in excess of his own share and at the expense of the two writ petitioners.

4. But, it is over-looked that on the petitioner's own showing the share of Raghundan Prasad in the total suit lands would be 9.45 acres and the determination of his share in the suit lands is still open before the civil Court and hence, the petitioners shall not suffer any prejudice even if Raghunandan Prasad is allowed to receive compensation for 8.71 acres out of the acquired 13.31 acres. This is exactly what the trial Court observed while rejecting the plaintiff writ petitioner's prayer for interim injunction to restrain Raghunandan Prasad from receiving the compensation, amount for the area of land shown in the notice in his name.

5. It may be noted here that as soon as the present dispute arose, the plaintiff Mahendra Prasad filed a petition under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure before the trial Court praying for an interim injunction against defendant No. 1, restraining him from getting an award prepared

in the land acquisition proceeding for more than his share in the lands under acquisition.

6. At the same time Basudeo Prasad filed a petition before the Collector making the request to stay the payment of compensation till the disposal of the partition suit. On 21-11-2002 the Collector allowed the request and directed that payment of compensation for the acquired land would not be made until the disposal of the partition suit. On 15-12-2000 awards were made in the land acquisition proceeding. At that stage no petition was filed by anyone for a reference under Section 30 of the Act and hence, on 25-5-2001 the Collector reiterated the earlier direction not to make payment of the compensation amount till the disposal of the partition suit.

7. . It appears that at that time Raghunandan Prasad was not seriously resisting these directions being passed in the land acquisition proceeding because the matter of ad interim injunction in the suit was still pending before the Court. On 25-7-2001, the Subordinate Judge finally rejected the injunction petition and two days later on 27-11-2001 Raghunandan Pd. filed a petition claiming the amount of compensation of the acquired land. In support of his claim he strongly relied upon the order of the Subordinate Judge refusing to grant injunction as prayed for by the plaintiff and further contended that any delay in making the payment would make the land acquisition authorities squarely liable to pay interest on the compensation amount.

8. At this stage Mahendra Prasad made a petition under Section 30 of the Act for making a reference to the Court for apportionment of the compensation amount and on hearing the parties, the Collector by order, dated 13-2-2002 rejected the petition filed by Mahendra Prasad and allowed Raghunandan Prasad's request for payment of compensation without further delay.

9. The petition for making reference to the Court was filed by Mahendra Prasad purportedly on the basis of an observation made by the Subordinate Judge in the order rejecting the prayer for interim injunction in the suit.

10. It is noted above that the Subordinate Judge rejected the prayer for ad interim injunction made by the plaintiff by order, dated 25-7-2001. It is significant to note that against this order no appeal or revision was preferred and the matter was allowed to attain finality. However, in pursuance of an observation made in the concluding part of the order the petition was filed before the Collector which was dismissed by the impugned order.

11. I have gone through the order passed by the Subordinate Judge on the plaintiff's prayer for ad interim injunction and I find that the plaintiff was given the liberty to move the Collector under Section 30 of the Act on the basis of a gratuitous observation made at the end of the order which is otherwise quite correct and proper. The learned Subordinate Judge noted the case of Raghunandan Prasad that payment of compensation to him for 8.71 acres of acquired land would be subject to the final decision in the suit and made the following observations in his order :

'Further I find that there is no question of irreparable loss to the plaintiff because this question of apportionment of compensation money even if some excess amount is drawn by either party, it will be adjusted at the final judgment of the suit between the parties.'

12. To my mind the observation fully protects the interest of the writ petitioners. The trial Court plainly holds that the determination of the respective shares of the parties in the family property shall be finally made in the suit and any payment received by the parties during the pendency of the suit shall be subject to its final result and liable to adjustments, according to the final determination of the respective shares.

13. The writ petitioners need to realise that the intervening acquisition of a part of the suit land has not altered the scope and ambit of the partition suit. The only change is to the extent that a part of the suit property, that was hitherto in form of 13.31 acres of land has got converted into cash. But the amount of compensation paid by the Government for the acquired land would still continue to be the subject matter of the suit. Once, this is realised, the entire dispute would become non-existent.

14. At this stage, however, I would only add a note of caution for the trial Court. It may be noted that one of the main grounds for rejecting the prayer of interim relief is the loss of interest resulting from delay in the payment of the compensation money. In this regard the trial Court made the following observation:

'In case of restraintment there will be no payment to either party and further the money will remain blocked and will not fetch any interest. In the event of the judgment, the parties will be entitled to get according to their share in principle which has been adjudged by the land acquisition department. There will be sufference of interest to each and every parties. Thus. I find that the balance of convenience is not in favour of the plaintiff.'

15. The accrual of interest is an important consideration and the trial Court was quite right to take it into consideration. But, the same consideration must be borne in mind In case any adjustments are required at the time of final disposal of the suit. At that stage the trial Court shall not take into consideration only the principal amount received by the three parties but would also take into account interest at bank term-deposit rates from the date the respective amounts were received till the date of the final decree and the execution of the decree.

16. In the result, I find no ground for any interference in this matter and these two writ petitions are accordingly dismissed, subject to the aforesaid observations.

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