

Devendra Prasad Nayak Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-02-1995

Judge : Aftab Alam, J.

Appeal No. : C.W.J.C. No. 10346 of 1993

Appellant : Devendra Prasad Nayak

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

Aftab Alam, J.

1. The petitioner in this application challenges the orders passed in a proceeding under the Bihar Public Land Encroachment Act directing the Eviction of the petitioner from the disputed land. The order of eviction was passed by the Original Authority, the Circle Officer-cum-Block Development Officer, Rosera on 4.10.1976 (Copy at Annexure-2) in Encroachment Case No. 15/23 of 75-76. The petitioner's appeal against this order was rejected by order dated 15.6.1982 passed by the Collector, Samastipur (Copy at Annexure-4). A further appeal by the petitioner before the Commissioner, Darbhanga Division was rejected as not maintainable by order dated 7.1.1991 passed by the Commissioner, Darbhanga Division (Copy at Annexure-5).

2. The subject matter of the proceeding has been described in detail in paragraph 4 of the writ petition. The disputed land measures 6 kathas 1/2 dhurs, equivalent to about 26 decimals, and is part of a bigger plot bearing No. 1187 within Ward No. 3, now Ward No. 6 of Rosera Municipality, District Samastipur. According to the writ petition 2 1/2 decimals out of the disputed land towards its extreme east constitute the flank and the road side ditch by the said of the Darbhanga-Rosera road. It is also stated in the writ petition that the residential house and some shops are constructed over the disputed land.

3. It is an admitted position that the disputed land was not a public land from the inception. According to the petitioner Plot No. 1187 originally belonged to one Jagdeo Sah and Basudeo Sah who were its absolute owners. On 26.11.1957 the father of the petitioners purchased the disputed land from the aforesaid owners under a registered sale deed executed in favour of the petitioner who at that time was a minor. On the same date another piece of land measuring to an area of 3 kathas, 9 dhurs and 11 dhurkis was also purchased from the same plot in the name of the petitioner. Following the purchase the two pieces of land which were contiguous with each other were amalgamated. The lands were duly mutated in the Government records in the name of the petitioner who claims to have rent receipts issued by the State of Bihar upto the year 1987. As noted, a residential house and shops were constructed over the land and the petitioner is said to be paying rent to the Municipality as well.

4. It is not denied by the State that the disputed land was originally private land. According to the respondent the disputed land became public land following its acquisition under a Land Acquisition Proceeding for the purpose of construction of the Darbhanga-Rosera road.

5. From the counter affidavit filed on behalf of the State it appears that a requisition was made for acquisition of some lands including 1.75 acres of land from Plot No. 1187 of which the disputed land with a house-cum-shops formed a part.

6. The publication of the notification under Section 4 of the Land Acquisition Act was made on 30.6.1962 and after the disposal of the objections a declaration

under Section 6 was made on 23.9.1964. In the Land Acquisition Proceeding Award No. 65 was prepared in the name of the father of the petitioner. Thereafter in 1975 a proceeding under the Public Land Encroachment Act was initiated in respect of the disputed land. On 22.4.1976 the petitioner appeared and filed a petition in the land encroachment proceeding which was finally decided against him with a direction for eviction.

7. Mr. Sashi Shekhar Dwivedi, learned Counsel appearing on behalf of the petitioner submitted that the land was raiyati land of the petitioner, it could not be acquired without giving a notice to him and a notice to his father would be of no avail as the ownership of the land stood in his name.

8. I am not impressed by this submission because a proceeding under the Land Acquisition Act is not in respect of any individual but in respect of the land which is proposed to be acquired. It is apparent from the different sections of the Land Acquisition Act that the making of publications and issuance of notices etc. are not against any individual person but public notices are given so that any one claiming any interest in the land proposed to be acquired, may appear before the authorities and file objections etc. Hence the plea that the acquisition of the land was itself invalid in the absence of notice to the petitioner appears to be without any substance.

9. In my opinion, however, this application must succeed and the orders passed under the Land Encroachment Act must be quashed for a different reason.

10. It is self evident that a proceeding under the Public Land Encroachment Act can be initiated only in respect of some public land which has been defined under the Act to mean any land vested in the Union of India or the State of Bihar.

11. Now Section 16 of the Land Acquisition Act provides as to how and when a land would vest in the Government. Section 16 reads as follows:

When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

12. From the aforequoted Section it is clear that the land would vest in the Government only when its actual possession is taken over by the Collector. A Division Bench of this Court in the case of Rambahadur Thakur & Co. v. Government of Bihar and Ors. 1986 P.L.J.R. 958 has laid down as follows:

From the above discussions, I must hold and conclude that vesting in the Government takes place only when (1) the Collector makes the award and (2) the making of the award is followed up by his actually taking possession of the land under Section 16.

13. It is further to be noted that taking of possession in terms of Section 16 of the Act envisages taking of actual possession of land and a 'symbolical' or 'paper possession' in the sense understood by judicial decisions under the Code of Civil Procedure would not suffice for the purpose of Section 16 of the Land Acquisition Act. The authority on this point is to be found in the Supreme Court's decision in the case of B. N. Bhagde. v. M.D. Bhagwat : AIR 1975 SC1767 . In the aforesaid decision the Supreme Court laid down the law on this point in the following words:

We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land since all interests in the land are sought to be acquired by it. There can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the Land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case.

In that case the acquired land was lying fallow and there was no crop on it at the material time and, therefore, the act of the Tehsildar in going on the spot and

inspecting what part was waste and arable and should, therefore, be taken possession of and determining its extent, was held sufficient to constitute taking of possession.

14. In this case the subject matter of acquisition was not fallow land but a land over which a residential house and shops were standing which were occupied by people. It, therefore, appeals to reason that perhaps something more would have been required in his case than a person going over the land and making a formal declaration of taking possession. But as would be presently seen even that was not done and as it appears from the record of this case the act of taking possession of the land seems to have remained on paper only.

15. In paragraph 14 of the writ petition it has been specifically asserted that possession of the disputed land was not taken over by the State. In reply to this, it is stated in paragraphs 5 and 9 of the counter-affidavit as follows:

That the said land was handed over to the Requisitioning Department which is the Road Construction Department, Samastipur on 19.2.1968.

That the deponent is filing map which will certify that the land of the petitioner was declared and handed over to the Road Construction Department on 19.2.1968.

16. In view of the law laid down on the point in the Supreme Court's decision and in view of the petitioner's assertion and, last but not the least, in view of the fact that the respondent-authorities had to initiate a proceeding under the Land Encroachment Act the aforequoted statement made in the counter-affidavit regarding taking over possession of the acquired land is clearly not sufficient or adequate. Even if it is assumed that following the making of award the possession of the disputed land was taken over by the State, the respondents-authorities should have given the date on which they were again dispossessed by the petitioner necessitating the institution of the proceeding under the Public Land Encroachment Act.

17. In view of the facts and circumstances narrated above I am inclined to conclude that in the land acquisition proceeding and following the making of the

award the respondents-authorities never came in actual possession of the disputed land in terms of Section 16 of the Land Acquisition Act. Thus the land never vested in the Government and it never assumed the character of public land. It further appears to me that it was only with the intention of taking possession of the disputed land, after throwing out the petitioners, that the proceeding under the Public Land Encroachment Act was initiated. But it would be evident that the authorities in taking recourse to the Public Land Encroachment Act misdirected themselves inasmuch as any proceeding under the Public Land Encroachment Act was wholly misconceived and without jurisdiction because the land had not assumed the character of public land in absence of its actual possession having been taken over by the State. It further appears to me that what the authorities could do directly in terms of Section 47 of the Land Acquisition Act was sought to be done in a circuitous manner and by a proceeding which was wholly misconceived and without jurisdiction.

18. The authorities, if they so intend may even now take recourse to the direct action as provided under Section 47 of the Land Acquisition Act but the proceeding under the Public Land Encroachment Act and the impugned orders passed therein cannot be sustained for the reasons aforesaid.

19. In the result, this application is allowed and the impugned orders contained in Annexures-2, 4 and 5 are quashed. No. order as to costs.