

Sandhya Rani Devi and ors. Vs. Gour Chandra Panda and ors.

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Court : Jharkhand

Decided On : Oct-14-2003

Reported in : [2004(1)JCR98(Jhr)]

Judge : Vishnudeo Narayan, J.

Acts : Chhotanagpur Tenancy Act, 1908 - Sections 4 and 76; [Land Acquisition Act, 1894](#) - Sections 30

Appeal No. : A.F.O.D. No. 555 of 1989(R)

Appellant : Sandhya Rani Devi and ors.

Respondent : Gour Chandra Panda and ors.

Advocate for Def. : P.K. Prasad and; Pratyush Kumar, Advs.

Advocate for Pet/Ap. : Jaya Roy and; Tapas Roy, Advs.

Disposition : Appeal dismissed

Judgement :

Vishnudeo Narayan, J.

1. This appeal at the instance of Bharat Mahanty, the original petitioner appellant, who has died during the pendency of this appeal, is directed against the impugned judgment and decree dated 4.7.19,89 and 22.11.1989 respectively passed in Land

Acquisition Case No. 93(85) of 1985 by Shri H.C. Prasad, 1st Subordinate Judge, Seraikella whereby and whereunder the reference under Section 30 of the Land Acquisition Act (hereinafter referred to as to the said Act) on the basis of the petition of the petitioners-appellant made by the Land Acquisition Authorities for deciding the right title and interest of the original petitioner-appellant in respect of the acquired land for his entitlement to get compensation was dismissed'.

3. The State of Bihar (now Jharkhand) had acquired plot Nos. 530, 531, 532, 249, 250 and 251 of Sikmi Khata No. 73 under Khata No. 105 of village Gopalpur, Thana No. 225, PS Nimdih, district Singhbhum (now Seraikella Kharsawan) for Swarnrekha Multipurpose Project and award No. 47 in respect of plot Nos. 530, 531 and 532 and award No. 51 in respect of plot Nos. 249, 250 and 251 besides plot No. 180 K were prepared in the name of opposite parties-respondent and compensation amount of Rs. 31,267 and Rs. 26,338 under the aforesaid awards respectively were paid to the opposite parties-respondent in respect of the aforesaid land besides some other plots No. 105 stands recorded in the name of Rajni Panda. Khata No. 73 is a Sikmi Khata under Khata No. 105 aforesaid and Sikmi Khata No. 73 stands recorded in the name of the original petitioner appellant in respect of the aforesaid plots. The acquisition in question was made vide Land Acquisition Case No. 105/80-81. A petition under Section 30 of the said Act was filed by the original petitioner-appellant before the Land Acquisition Authorities in Land Acquisition Case No. 105/80-81 on 30.9.1985 claiming himself as rightful owner of the aforesaid plots entitled to get compensation amount in respect thereof as per the awards aforesaid.

3. The Land Acquisition Authorities referred the petition filed under Section 30 of the said Act of the original petitioner-appellant to the Land Acquisition Court for adjudication.

4. The case of the original petitioner-appellant is that the aforesaid plots under Sikmi Khata No. 73 has been recorded in his name in the Survey Records of Right and the said Khata No. 73 has been recorded under Sikmi Dakhalkar right under Khata No. 105 in the name of the Rajni Panda and the opposite parties-respondent are in no way connected with the aforesaid land and they were never

in possession over the same and they have also no right, title or interest in respect thereof and they in collusion with the Land Acquisition Authorities had obtained the compensation amount in respect of the said land on their acquisition as per award Nos. 47 and 51. It is also alleged that no notice in respect of the acquisition of the said land under different provisions of the said Act was ever served upon him and award Nos. 47 and 51 were wrongly prepared in the name of the opposite parties-respondent who have no right title or interest in respect of the land under acquisition and they were also never in possession over the same. The further case of the petitioners- appellant is that they have improved the land under acquisition considerably and they are in possession over the same as of their right as Sikmidar and when they came to know about the payment of the compensation to the opposite parties-respondent in respect thereof, they had filed this petitioner under Section 30 of the said Act.

5. The opposite parties-respondent has filed their objection before the Land Acquisition Court stating, inter alia, therein that the aforesaid plots stand recorded in Khata No. 105 with the remark Sikmi Dakhalkar Bharat Mahanty, Sikmi Khata No. 73 and Khata No, 105 stands recorded in the name of the Rajni Panda, the cousin of these opposite parties-respondent and said Rajni Panda died after the revisional survey leaving the opposite parties-respondent as his heirs and they, accordingly, inherited all the properties of Rajni Panda including the land of Khata No. 105 and these opposite parties-respondent are the rightful owner of the land of Khata No. 105 having right, title and interest therein and they have never accepted the original petitioner-appellant is their Sikmi tenant for any land of Khata No. 105 of village Gopalpur. It is also alleged that the original petitioner-appellant have no right to get the compensation and he is also not the Sikmi Dakhalkar and he has also no right in the land under acquisition. It is also alleged that the possession of the original petitioner-appellant is permissive in nature and it is false to say that he has made any improvement in the land under acquisition. It has also been alleged that the award Nos. 47 and 51 have been rightly prepared in the name of the opposite parties-respondent along with one Sadhan Mahanty. It has also been alleged that the original petitioner-appellant had full knowledge of the acquisition of the aforesaid land and the notices under Sections 4, 6 and 9 of, the said Act was duly published in the village and the original petitioner-appellant did not file any

objection before the Land Acquisition Authorities till the date of the preparation of the award.

6. The original appellant Bharat Mahanty died during the pendency of this appeal and his heirs/legal representatives were substituted in his place as petitioners-appellant.

7. In view of the pleadings of the parties the learned Court below framed the following issues for determination in this case. ,

(i) Is the applicant entitled to claim for payment of compensation on the basis of Sikmi Dakhalkar of the land in question ?

(ii) Is the case as framed maintainable ?

(iii) Is the case time barred ?

8. In view of the oral and documentary evidence on the record the learned Court below held that the original petitioner-appellant is not entitled to get compensation of the acquired land as per award Nos. 47 and 51 made in Land Acquisition Case No. 105/80-81 as an under-raiyat cannot enjoy the status of a raiyat with respect to the land under acquisition in respect of which original appellant Bharat Mahanty does not stand recorded as raiyat. The learned Court below has also held relying upon the ratio of the case of Dr. G.H. Grant v. State of Bihar, AIR 1966 SC 237 that limitation has not been prescribed for making a reference under Section 30 of the said Act and in view of the findings aforesaid the claim of the original petitioner-appellant was dismissed.

9. The following points arise for adjudication in this appeal :

(i) Whether the original petitioner-appellant as under- raiyat having occupancy status has acquired also the right of an occupancy raiyat under the Chhotanagpur Tenancy Act; and

(ii) Whether the interest of an under-raiyat with occupancy status is heritable.

10. Assailing the impugned judgment it has been submitted by the learned counsel for the petitioners-appellant that the name of the original petitioner-appellant was recorded in the records of right as Sikmi Dakhalkar of the land under acquisition and he was in cultivating possession over the same till its acquisition and he has acquired occupancy rights in the said land and due to the acquisition he stands debarred of his possession over the land in question and in this view of the matter the original petitioner-appellant had possessory title over the land in acquisition and he was entitled to get compensation, if not the full amount of compensation, then the amount of compensation may be proportionately apportioned between the original petitioner- appellant and the opposite parties-respondent. In support of his contention reliance has been placed upon the ratio of the case of Union of India and Ors. v. A. Ajit Singh, AIR 1997 SC 2669. It has further been contended that the original appellant, who was recorded as Sikmidar i.e. under-raiyat of the land under acquisition, had died during the pendency of the appeal and his heirs who have been substituted in his place have inherited the right of Sikmidar and are entitled to get compensation as per the award aforesaid.

11. Refuting the contention aforesaid it has been submitted by the learned counsel for the opposite parties-respondent that the original appellant was admittedly under-raiyat recorded as Sikmi Dakhalkar in respect of the land under acquisition of Khata No. 73 under Khata No. 105 and the original appellant as Sikmidar may have the status of occupancy in respect of the land under acquisition but he cannot have the rights of a raiyat having occupancy right and as such he is not entitled to claim compensation in respect of the said land on their acquisition in view of the fact that he has no right title and interest therein. It has further been contended that the right of under- raiyat is neither transferable nor heritable under the law unless there is a custom contrary to it and in this case the petitioners-appellant had neither averred nor proved the prevailing custom in respect thereof and thus his heirs substituted as petitioners-appellant on his death cannot inherit the right of the original appellant as Sikmidar i.e. under-raiyat and as such the substituted petitioners- appellant are not at all entitled to get the amount of compensation determined under the awards aforesaid. In support of the contention reliance has been placed upon the ratio of the cases of Jugesh Chandra Bose v. Maq-bul Hussain, AIR 1936 Patna 384 and Johan Uraon (Ekka) and Anr. v.

Sitaram Sao (Bhagat) and Ors., AIR 1964 Pat 31.

12. It is an admitted fact that plot Nos. 530, 531, 532 as well as plot Nos. 249, 250 and 251 besides some other plots were acquired by the State for Suwarnrekha Multipurpose Project and Award Nos. 47 and 51 were prepared in respect thereof in the name of the opposite parties-respondent. Plot Nos. 530, 531, 532, 249, 250 and 251 stand recorded under Sikmi Khata No. 73 in the name of original petitioner-appellant Bharat Mahanty as Sikmi Dakhalkar and the Sikmi Khata appertains to Khata No. 105 which stands recorded in the name of Rajni Panda and on his death the opposite parties-respondent succeeded him in respect of the land under acquisition besides several other properties. The amount of compensation as determined by the Land Acquisition Authorities under awards Nos. 47 and 51 arising out of Land Acquisition Case No. 105/80-81 was paid to the opposite parties-respondent. The original appellant has taken oath in this case as AW 3 and has deposed that the lands which were acquired belong to him and he is entitled to get compensation and he stands recorded in the Survey Records of Right. AW 2 Durga Pada Mahanty is the son of the original appellant and he has deposed that the land under acquisition belongs to his father, the original appellant, recorded in his name in the Survey Records of Right and no notice of the acquisition of the aforesaid land has ever been served on his father. He has also deposed that the opposite parties-respondent have no right, title and interest therein. AW 1 Dhananjay Gope has deposed regarding the cultivating possession of the original appellant over the land in acquisition. AW 4 is a formal witness. However, no evidence has been brought on the record on behalf of the opposite parties-respondent. The petitioners-appellant claims their right title and interest in the acquired land as Sikmidar being in cultivating possession over the same till their acquisition. A Sikmidar is an under-raiyat Section 4 of the Chhotanagpur Tenancy Act defines the classes of tenants and it reads thus :

'4. Classes of tenants.--There shall be, for the purposes of this Act, the following classes of tenants, namely :

(1) tenure-holders, including under-tenure-holders;

(2) raiyat, namely :

(a) occupancy raiyats, that is to say, raiyats having a right of occupancy in the land held by them,

(b) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy, and

(c). raiyats having khant-katti rights,

(3) under-raiyats, that is to say, tenants holding, whether immediately or mediately, under-raiyats; and

(4) Mundari khunt-kattidars.

It is, therefore, apparent that an under-raiyat is a tenant holding the land under a raiyat. It is pertinent to mention here that Chhotanagpur Tenancy Act does not specifically provide the rights and liabilities of an under-raiyat. However, Section 76 of the Chhotanagpur Tenancy Act mandates that nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions. Illustration (ii) appended with Section 76 aforesaid states that a custom or usage by which an under-raiyat can obtain rights similar to those of an occupancy raiyat is, similarly, not inconsistent with and is not expressly or by necessary implication modified or abolished by the provisions of this Act, and will not be affected by this Act. It, therefore, appears from illustration (ii) aforesaid that an under-raiyat can obtain the rights similar to those of an occupancy raiyat in accordance with custom or usage prevalent in the area in respect thereof which is not inconsistent with the provisions of Chhotanagpur Tenancy Act. Raiyats are of two types i.e. occupancy raiyats and non-occupancy raiyats; Occupancy raiyats means a raiyat having a right of occupancy in a land held by them. A person who has continuously held as a raiyat land for a period of twelve years situate in a village whether under a lease or otherwise shall be deemed to have become on the expiration of that period a settled raiyat of that village, and every settled raiyat of a village shall have a right of occupancy in all the land for the time being held by him as a raiyat in that village. An under-raiyat as of rights does not acquire any occupancy right in the land held by him under a raiyat in absence of any custom or usage prevalent in the

area in respect thereof. Here in this case the original petitioner-appellant stands recorded in respect of the land under acquisition as Sikmidar i.e. under-raiyat and he is in cultivating possession of the land under acquisition as such till its acquisition. The original petitioner-appellant, therefore, is in cultivating possession of the land under acquisition for several twelve years and thereby they have acquired the status of occupancy over the land in question as Sikmidar i.e. under-raiyat but it does not mean that an under-raiyat who has acquired occupancy status also acquires the rights of an occupancy raiyat as defined under the Chhotanagpur Tenancy Act and the rights of an under-raiyat having acquired the rights of an occupancy raiyat will entirely depend on the local custom. The original petitioner-appellant has neither averred nor proved any prevalent custom in this case whereby it will appear that he has acquired the rights of an occupancy raiyat as defined under the Tenancy Act aforesaid. Therefore, the original petitioner-appellant cannot be said to have right, title and interest in respect of the land under acquisition entitling him to claim compensation of the land under acquisition and therefore, the award has been correctly prepared in the name of the opposite parties-respondent who are the descendants of recorded tenant Rajni Panda of Khata No. 105. I am fortified in my view as per the ratio of the cases of Johan Uraon (Ekka) and another (supra) and Jugesh Chandra Bose (supra). It has been observed in the case of Jugesh Chandra Bose (supra) which, runs thus:

'.....the interest of an under-raiyat with occupancy raiyats is not heritable under the land, and the question whether an under-raiyat who acquires occupancy rights as acquires also the rights of an occupancy raiyat as defined by the tenancy act depends entirely on the local custom.'

In the case of Johan Uraon (Ekka) and another (supra) it has been observed thus :

'.....It is well settled that the interest of an under-raiyat (dor raiyat interest) with occupancy status is not heritable under the law though it may be heritable by custom. Where, in a suit for eviction the defence was that the defendants had acquired permanent occupancy rights in the disputed lands from their father who had acquired those rights by prescription, and both the Courts below concurrently

held that the custom of heritability was not established, the status of the defendants was nothing more than that of a trespasser and they were liable to be ejected.'

The right of an under-raiyat is neither transferable nor heritable unless there is a custom or usages contrary to that. The right of an under-raiyat survives till his life and it extinguishes on his death. Here in this case the substituted petitioners-appellant cannot be said to have inherited or acquired the rights of the original appellant as under-raiyats on being his heirs on his death in the absence of any pleading and proof of the prevalent custom or usage in respect thereof and thus the substituted petitioners-appellant are not at all entitled to get the compensation of the land under acquisition. In this view of the matter the ratio of the case of Union of India and others (supra) relied upon by the petitioners-appellant for the apportionment of the compensation amount between the petitioners-appellant and the opposite parties-respondent is of no avail to him. Therefore, both the points are decided against the petitioners-appellant and in favour of the opposite parties-respondent. I see no illegality in the impugned judgment requiring any interference therein.

13. There is no merit in this appeal and it fails. The impugned judgment is hereby affirmed and the appeal is dismissed. In the facts and circumstances of this case there shall be no order as to costs.

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