

Smt. Shanti Devi . Vs Bihar State Electicity Board. and ors

Smt. Shanti Devi . Vs Bihar State Electicity Board. and ors

SooperKanoon Citation : sooperkanoon.com/917280

Court : Patna

Decided On : May-04-2011

Judge : Mungeshwar Sahoo, J.

Appeal No. : FIRST APPEAL No. 177 OF 2006

Appellant : Smt. Shanti Devi .

Respondent : Bihar State Electicity Board. and ors

Judgement :

(1) judgment and decree dated 30.08.2006 passed by Sri Vayu Nandan Lal Srivastava, the learned Subordinate Judge IV, Rohtas at Sasaram in title suit no.74 of 1988 whereby the learned Court below has decreed the plaintiff's suit in part only.

(2) The original plaintiff, one Rajpati Devi filed the aforesaid suit who died during the pendency of the suit and, therefore, her daughter, Smt. Shanti Devi the present appellant was substituted. The suit was filed claiming Rs.1 crore as compensation and damages and in the alternative for recovery of possession of the land described in detail in Schedule-A of the plaint. 18% interest pendente lite was also prayed for.

(3) The plaintiff-appellant claimed the said relief alleging that plaintiff is the owner of the suit land which is situated in the market place of Nasriganj Town measuring 84 1/2 decimals in total. The Bihar State Electricity Board dispossessed the

plaintiff from the suit land with the help of the State Authorities on 22.12.1979 and constructed the Electricity Supply Sub-Station. The land was never acquired legally. The plaintiff filed an application in the Land Acquisition Proceeding No.3 of 1979-80 claiming compensation on 14.04.1987. A report was submitted by the Land Acquisition Officer to the effect that the scheme of land acquisition of the suit land was cancelled and the scheme stands abated. The plaintiff annexed the said order of the District Land Acquisition Officer dated 25.08.1987 along with the plaint. Therefore, the possession of the defendants-respondents is that of trespasser without any Authority. It is further pleaded that the plaintiff was earning Rs.15,000 per year from the suit land. The plaintiff requested the defendant to pay the compensation amount at the rate of Rs.1 lakh per decimal. The plaintiff is entitled for the market value and also the prospective value which is being allowed under the provision of Land Acquisition Act along with damages caused to the property and status of the plaintiff. The defendant did not pay and ultimately refused to pay anything on 30.04.1988. Thereafter, the plaintiff filed the suit claiming Rs.1 crore.

(4) It appears that the Bihar State Electricity Board only filed the written statement. According to the written statement, the suit is barred under Section 34 of the Specific Relief Act and also under Section 80 C.P.C. and also under Section 52 of the Land Acquisition Act. The plaintiff is not owner and title holder of the disputed land which is far away from the market and it was sandy and unfertile land. It had no prospective value. The defendant, first set never dispossessed the plaintiff by force rather they were put in possession under the process of the law and then they have constructed the Electricity Sub-Station and the electricity is being supplied to the public at large. The defendant, second set had legally acquired the land and handed over the possession of the suit land to the defendant, first set. The compensation amount fixed by the appropriate authority has already been given i.e. Rs.1,30,000 for the lands acquired. The plaintiff has already paid the said amount.

(5) On the basis of the above pleadings of the parties, the following issues were framed by the learned Court below: (i) Whether the suit is maintainable?

(ii) Whether the Court has got jurisdiction to entertain the suit? (iii) Whether the plaintiff has got right, title and interest over the land detailed in Schedule A of the plaint?

(iv) Whether the defendant 2nd set had legally acquired the land detailed in Schedule-A of the plaint and handed it to the defendant 1st set.

(v) Whether the defendant 1st set have constructed Electricity Supply Sub-Station over the suit land and compensation amount of the disputed land has been paid to the plaintiff?

(vi) Whether the plaintiff is entitled for the relief claimed? (vii) Whether the plaintiff has got valid cause of action to file the suit/

(6) After trial, the learned Court below held that suit is maintainable and the plaintiff is entitled for damages of Rs.10 lacs only with 6% interest pendente lite and decreed the suit for the said amount.

(7) The learned senior counsel, Mr. S.S. Dwivedi appearing on behalf of the appellant submitted that the learned Court below has wrongly not decreed the plaintiff's suit for Rs.1 crore and has decreed for Rs.10 lacs only. According to the learned counsel, the market value of the land acquired was 1 lakh per decimal and, therefore, the plaintiff was entitled for the said amount along with interest as prayed for by her in the plaint. The learned counsel further submitted that although, the defendants-respondents did not adduce any evidence in support of their written statement and the evidence of the appellant was ex-parte in nature, the learned Court below should have decreed the plaintiff's suit for Rs.1 crore. The plaintiff-appellant has adduced reliable evidences oral as well as documentary but the learned Court below has not properly appreciated the evidences and granted a meager amount of compensation. There was a house on the disputed land but no value for the house was assessed and nothing was paid on account of the value of the house. According to the learned counsel, the respondents forcibly dispossessed the appellant, therefore, the plaintiff was entitled for penal interest but the Court below has granted only 6% interest. The learned counsel further submitted that the appellant was entitled for compensation under the Land

Acquisition Act as provided under Section 23 of the said Act but the learned Court below has not calculated the rate of the land according to Section 23 of the L.A. Act. The appellant was also entitled for additional compensation and solatium etc.. According to the learned counsel, the respondents being the agency of Welfare State, they are supposed to act for the welfare of the people at large and not to fight like a litigant and defeat right claim of the plaintiff. On these grounds, the learned counsel submitted that the impugned judgment and decree be modified and the plaintiff's suit be decreed in toto.

(8) Mr. Vinay Kirti Singh, the learned counsel appearing on behalf of the Bihar State Electricity Board submitted that the learned Court below has granted much more compensation without considering the fact that the possession was taken in the year 1979 and, therefore, the market value of the land should have been fixed with reference to that date. The learned Court below has wrongly fixed the market value on the date of judgment. The learned counsel further submitted that the plaintiff should have paid the Court fee on the suit and appeal valuation but has obtained Certificate from the Circle Officer to the effect that her yearly income is Rs.19,000. Now, the decree has been passed by the Court below for Rs.10 lacs, therefore, the plaintiff should pay the Court fee. According to the learned counsel, the value of the land in the year 1979 was not Rs.1 lakh per decimal rather the Electricity Board had already deposited just and proper compensation to the tune of Rs.1,30,000 with the State of Bihar and the plaintiff is not entitled for any further compensation over and above Rs.1,30,000.

(9) The learned A.C. to A.A.G.1 appearing on behalf of the State of Bihar submitted that no doubt, the land acquisition proceeding lapsed but the plaintiff have been paid the amount of Rs.1,30,000 which was just and proper compensation for the lands acquired. The claim of Rs.1 crore is exorbitant and exaggerated. In view of decree, the Court fee for the suit and the appeal be deducted from the appellant from the amount payable to her.

(10) In view of the above submissions of the parties, the points arise for consideration is "what was that market value of the land on the date of taking possession" and "whether the compensation in the form of damage granted by the

Court below is just and proper" or "whether the plaintiff is entitled to more than Rs.10 lacs" and "whether the impugned judgment and decree are sustainable in the eye of law?"

(11) It may be mentioned here that only the plaintiff has adduced evidences oral as well as documentary. Neither the State of Bihar nor the Bihar State Electricity Board adduced evidence in support of their case. Therefore, the evidences of the plaintiff-appellant are ex- parte in nature. From perusal of Exhibit-2 which is report of District Land Acquisition Officer, Rohtas, it appears that Land Acquisition Case No.3 of 1979-80 was initiated for acquisition of the appellant's land. After publication of declaration, process for measurement was started and report was called for from the Electricity Department regarding the valuation of house. The Electricity Department did not give any report and, therefore, the acquisition proceeding lapsed on 23.09.1986 and no award was prepared. There is no contrary evidence adduced by the respondents. Now, therefore, the position is that the plaintiff was dispossessed from her suit land in the year 1979 by the Bihar State Electricity Board without any lawful authority and, therefore, the possession becomes illegal.

(12) Although, the Bihar State Electricity Board pleaded in the written statement that the plaintiffs are not the owner but there is no evidence in support of the said pleading. On the contrary, the plaintiffs have filed Exhibit-5(a) which are khatian of Mauja Nasriganj which shows that plaintiff's mother Rajpati Kuer was the owner of the property. Plaintiff is the daughter of said Rajpati Kuer.

(13) Mr. Vinay Kirti Singh appearing on behalf of the Electricity Board submitted that the appropriate authority had already fixed the compensation of the acquired land at Rs.1,30,000 which has already been paid. So far this submission is concerned, neither there is oral evidence nor any documentary evidence to the effect that the said amount was ever paid by the Bihar State Electricity Board either to the State of Bihar or to the plaintiff-appellant. As stated above, Exhibit clearly shows that no award was prepared and the proceeding had lapsed. The learned counsel next submitted that no notice under Section 80 C.P.C. was served. So far this submission is concerned, it appears that the suit was filed by

the plaintiff after taking permission to file the suit without service of notice. So far the claim of the plaintiff regarding restoration of land is concerned, it appears that Electricity Sub-Station has already been established on the suit land and electricity is being supplied to the public. Therefore, the learned Court below as rightly held that the possession of the land cannot be restored in favour of the plaintiff. Now, therefore, the only question remains to be decided is to what amount the plaintiff is entitled on account of damage?

(14) P.W.1, Vidya Sagar Prasad has stated that there are Post Offices near the land and there are also business centres near the land. He has not stated about the prevalent market value of the land on the date of acquisition. P.W.2 has stated that there was Bank and Post Office near the suit land and the plaintiff was earning Rs.15,000 per year from the suit land. P.W.3 has stated that the suit land was fit for market. There are Bank and Offices by the side of the suit land. Plaintiff was earning Rs.15,000 per year from the suit land. P.W.4 is the appellant herself. She has stated that she is the owner of the suit land and in the suit land, there was house and in rest portion, cultivation was being done. In some portion, tenants were inducted. Out of the income from cultivation and rent, the family was being maintained. P.W.5 is the husband of P.W.4. He has also stated that from the usufruct of the suit land and rent, there was Rs.15,000 yearly income. On 22.10.1975, the Bihar State Electricity Board dispossessed Rajpati Kuer. The other witnesses i.e. P.W.6 to P.W.10 are formal witnesses. They have not stated about the market value of the land. From the discussion of the oral evidence, it appears that except the statement that there were Bank and Post Office and other business centres near and around the suit property none of the witnesses have stated anything more about the value of the land or house. Further, almost all the material witnesses have stated that the earning of the plaintiff-appellant was Rs.15,000 per year from the suit land. It further appears that the suit land was being used as agricultural land. Now let us see the documentary evidences with regard to the market value of the land. It appears that for determination of the market value only one sale deed has been produced by the plaintiff-appellant which has been marked as Exhibit-6. The other documents are not related with regard to the market value of the land. They are either the rent receipts, the order showing cancellation of acquisition(Exhibit-2), Khatian etc.. Exhibit-6 is the sale

deed of the year 1989. It may be mentioned here that the plaintiff's case itself is that she was dispossessed in December, 1979. This sale deed is of the year 1989 i.e. 10 years after dispossession. Therefore, this sale deed cannot be based for determining the market value of the suit land and the learned Court below has rightly not relied upon this sale deed (Exhibit-6).

(15) In view of the above discussion, it appears that there is absolutely no evidence in support of the claim of the plaintiff. Although, the evidence of the plaintiff is ex-parte in nature and no evidence has been adduced by the respondents but then it was the duty of the plaintiff to have adduced reliable evidences regarding either the market value of the land or amount to which she was entitled for on account of damage caused by dispossession. We have seen above that no such evidence is there.

(16) The learned senior counsel, Mr. Dwivedi submitted that the plaintiff-appellant is entitled for the damage caused by the respondents since 1979 at the rate of Rs.15,000 per year till the amount is paid and moreover, the value of the land is to be determined when the suit was filed by the plaintiff. So far this submission is concerned, I do not agree with the learned counsel because according to the plaintiff herself she was dispossessed in December, 1979. Therefore, the market value of the land is required to be determined with respect to the said date and not with respect to the date when the suit was filed. The learned counsel further submitted that while determining the compensation/damage, the learned Court below should have granted the other benefits as provided under the provision of section 23 of the Land Acquisition Act. So far this submission is concerned also, I do not agree because this suit is a regular money suit for damages. Land Acquisition Act has got no application. However, for determining the market value of the land, the principles of land acquisition may be applied but here as discussed above, there is absolutely no reliable evidence. It was for the appellant to have adduced cogent and reliable evidence to show that the suit property could have fetched more value than that granted by the Court below. According to the plaintiff's case herself she was earning Rs.15,000 per year from the suit land. Accepting the case of the plaintiff to be gospel truth after applying the principles of Land Acquisition Act the compensation is calculated then, according to the

Supreme Court 1995 Suppl.(2) SCC 637(State of Haryana vs. Gurcharan Singh), 12 years multiplier is suitable multiplier for agricultural land. Accordingly, Rs.15,000x12 comes to Rs.1,80,000 only if nothing is deducted on account of agricultural expenses. Generally 50% is deducted on account of expenses. If it is deducted then valuation comes to Rs.90,000. On this amount, the plaintiff was entitled for additional compensation, solatium and interest as per the Land Acquisition Act but since this is a regular money suit that principle is not applicable and, therefore, the learned Court below has rightly not calculated the damage in that principle.

(17) The learned counsel for the appellant submitted that the appellant is entitled for additional compensation, solatium and interest on the amount decreed by the Court below from the date of dispossession but the learned Court below has granted only interest at the rate of 6% per annum pendent elite. So far the submission of the learned counsel is concerned, it may be reiterated that this is a suit for damage. The plaintiff has not at all adduced satisfactorily either oral or documentary evidence regarding the market value of the land. Exhibit- 6 is the sale deed of the year 1989 and, therefore, it cannot be based for determining the market value. There is no question of payment of solatium or additional compensation or interest according to Land Acquisition Act arises. Considering all these aspects of the matter about the evidences adduced by the plaintiff, the learned Court below has found that Rs.10 lacs is just and proper compensation/damage to which the plaintiff is entitled for. No cross-objection has been filed by the Bihar State Electricity Board challenging this finding of the Court below. Therefore, this finding cannot be interfered with. So far granting a decree for Rs.1 crore is concerned, as discussed above, there is no oral as well as documentary evidence to the satisfaction of the Court to come to a definite conclusion to that effect. I, therefore, find no reason to interfere with the finding of the learned Court below and since there is no evidence to enhance the said amount, I find that the plaintiff is not entitled for Rs.1 crore as claimed by her.

(18) It appears that on the basis of Certificate granted by the Circle Officer, the appellant was exempted from paying the Court fee. However, since the decree has been passed holding that the plaintiff is entitled for Rs.10 lacs as damages

and further, the said amount is to be paid with interest at the rate of 6% per annum pendente lite, the amount of Court fee required to be paid to the suit as well as in this appeal be realized from the plaintiff-appellant at the time of the execution of the decree and the rest amount after deducting the Court fee be paid to her.

(19) In the result, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed. No order as to costs

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com