

(2003) 01 JH CK 0034

Jharkhand High Court

Case No: Appeal from Original Decree No. 1 of 1991 with F.A. No"s. 2, 3, 4, 5, 6 and 7/91
and CWJC No. 2591/95

State of Bihar

APPELLANT

Vs

Maheshwar Prasad Sao and
Others

RESPONDENT

Date of Decision: Jan. 13, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Land Acquisition Act, 1894 - Section 18, 4, 6

Citation: (2003) 1 JCR 627

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Manju Prasad and I. Sen Choudhary, for the Appellant; C.S. Prasad, R.D. Gupta, B.N. Dey, V. Shivnath, G. Mahto and S.K. Dey, for the Respondent

Judgement

M.Y. Eqbal, J.

All these appeals arise out of the common judgment passed by the Land Acquisition Judge, Hazaribagh in bunch of reference cases whereby the reference u/s 18 of the Land Acquisition Act has been allowed and the compensation has been increased. A writ petition being CWJC No. 2591/95 relates to the same matter which has been agitated by the appellants after impleading them as party respondents in the appeal.

2. It appears that for the purpose of Patratu Thermal Power Station popularly known as PTPS, the Government acquired certain lands vide notification dated 2.4.1985 and the award was passed by the Collector under the provisions of Land Acquisition Act. Several claimants moved the Collector for reference as they were dissatisfied with the compensation awarded by the Collector and consequently dispute was referred to the Land Acquisition Judge for determination. The Land Acquisition Judge after

hearing the parties and after considering all the documents increased the rate of compensation by the impugned judgment. The PTPS alongwith Bihar State Electricity Board filed the instant writ application in the Patna High Court seeking appropriate direction upon the respondents including the State of Bihar and the Revenue Officers to dispose of the dispute regarding settlement of 57 acres of lands and also for a direction to the respondents not to demand any further amount from the petitioner pursuant to the judgment passed by the Land Acquisition Judge. The writ petition was dismissed by the Patna High Court but in the appeal preferred by the writ petitioner before the Supreme Court, the matter was remanded back to the High Court with a direction to dispose of the case on merit.

3. In the First Appeal the Bihar State Electricity Board and the FTPS also filed a petition for being impleading them as Party respondents, which was allowed by order dated 23.11.1997. A separate application was also filed under Order XLI, Rule 27 of the CPC for allowing them to adduce additional evidence. This Court by order-dated 15.1.1999 directed that the petition for additional evidence shall be considered at the time of hearing. In the writ petition also an order was passed on 2.11.1996 directing that these First Appeals shall be heard alongwith the writ petition. This is how all the matters came for hearing before this Bench.

4. Mr. Manjul Prasad, counsel for the appellant/State very fairly contended that there is less scope for sustaining with the impugned judgment passed by the Land Acquisition Judge for the reason that neither any objection was filed nor any evidence was lead before the Land Acquisition Judge justifying the rate of compensation assessed by the Collector. However, admittedly the Electricity Board and the PTPS were neither noticed nor were given opportunity of hearing by the Land Acquisition Judge before enhancing the rate of compensation. The Respondent/Board has annexed list of the documents not only with regard, to higher valuation of the compensation fixed by the Collector but also to the effect that some portion of the land was illegally notified for acquisition. This Court is, therefore, of the view that the newly added respondents namely; PTPS and the Electricity Board are entitled to lead evidence in support of their case. Hence application under Order XLI, Rule 27, CPC is allowed. Since the Land Acquisition Judge without giving notice to the Electricity Board and the PTPS for whose benefit land was acquired passed the impugned judgment, same cannot be sustained in law.

5. For all these reasons all these appeals are allowed and the judgment and the award is set aside. The matter is remanded back to the Land Acquisition Judge for passing fresh judgment after giving opportunity of hearing to the Electricity Board and the PTPS, to lead evidence in support of their case.

6. Needless to say that the claimants/ respondents shall be entitled to lead evidence in rebuttal, if so advised. So for writ petition is concerned in view of the fact that the writ petitioner shall be given opportunity to place their case before the Land

Acquisition Judge, the question raised by them shall also be determined by the Land Acquisition Judge. In the light of the order, the writ petition is also stands disposed of.

7. Since the Land Acquisition matter is pending for the last more than a decade, the Land Acquisition Judge is directed to immediately took up the matter on receipt of the record and dispose of the same as expeditiously as possible and preferably within a period of Four weeks from the date of receipt of copy of this order. Let the lower Court record be sent to the Court below forthwith.