

Bisheswar Mahto Vs The State of Jharkhand

Court: Jharkhand High Court

Date of Decision: July 1, 2014

Acts Referred: National Highways Act, 1956 " Section 3H(4)

Hon'ble Judges: R. Banumathi, C.J; P.P. Bhatt, J

Bench: Division Bench

Advocate: Ranjan Prasad Sinha and Sanjeev Thakur, Advocate for the Appellant; Shamim Akhtar, S.C. (L and C) and Sweety Topno, Advocate for the Respondent

Judgement

1. This Letters Patent Appeal is filed against the order dated 22.02.2013 passed by the learned Single Judge in W.P. (C) N. 2289 of 2012

dismissing the writ petition giving liberty to the appellants to approach the Civil Court to establish their title, ownership and possession upon the

property in the proper way.

2. Case of the appellants is that the ex-landlord, Dulhin Sri Choubeni Kunwar Padama had settled 3.32 acres of land of Kaitha Mauza, recorded

as Gair Mazarua Khas, under Khata No. 84, Plot No. 171 in favour of Sikhu Mahto through Hukumnama in the year 1924-25. The rent was

assessed and paid to the ex-landlord from 1924-25. Further case of the appellant is that after coming into force of the Bihar Land Reforms Act,

rent was assessed in the name of Shikhu Mahto and rent had been paid to the Government of Bihar and after the death of said Shikhu Mahto, the

appellants came in possession of land and they were paying rent to the State Government till 1984. The appellants relies upon Annexure 6 to show

that they were paying rent till 1984. Further case of the appellant is that one notice was issued on 7.06.2010 for acquisition of land situated in

various plots including Plot No. 171 under Khata No. 84 (Annexure 4) for construction of Four Lane N.H.-33.

3. According to the appellants, they filed several representations before the 4th respondent for payment of compensation of the land but in spite of

number of representations no action had been taken and no compensation was paid to them. Stating that the appellant's representation for

payment of compensation was not considered, the appellants have filed the Writ Petition being W.P. (C) No. 2289 of 2012 seeking direction upon

the respondents to issue rent receipts forthwith to the appellants in respect of area 3.32 acres of land under Khata No. 84, Plot No. 171 of village

Kaitha, District-Ramgarh and also to direct the respondents to pay compensation in lieu of the land acquired by the respondents for construction of

National Highway No. 33.

4. Upon consideration of the contentions raised by the parties, the learned Single Judge held that the land in question are shown as Gair Mazarua

Khas and as such the appellants' claim for payment of compensation is not sustainable. It is farther held that as the appellants have not produced

any document to show their possession after 1984. However, while dismissing the writ petition, the learned Single Judge granted liberty to the

appellants to agitate the cause of action before the competent Court having civil jurisdiction, where such issues relating to title, ownership and

possession of the appellants can be decided.

5. Being aggrieved by the dismissal of the writ petition, the appellants have filed this Letters Patent Appeal.

6. Heard Mr. Ranjan Prasad Sinha, learned counsel for the appellants, Md. Shamim Akhtar, learned S.C. (L & C) for the State-respondent and

learned counsel Ms. Sweety Topno for the National Highways.

7. Laying emphasis upon Annexure-6, the learned counsel for the appellants submitted that the appellants had been paying rent for Plot No. 171 till

1984 and the grant of rent receipt was stopped by the authorities without any valid reason. It is further submitted that the appellants came in

possession of Plot No. 171 by way of Hukumnama, which was settled in favour of ancestor of the appellants and they were in possession of the

property and after vesting of Zamindari, the appellants' ancestors and thereafter appellants paid rent to the Government and the appellants are

entitled to receive the compensation as per the notification issued by Revenue and Land Reforms Department, Government of Jharkhand dated

14.05.2009.

8. Learned counsel for the State of Jharkhand Md. Shamim Akhtar submitted that the appellants have not produced any rent receipt to show that

the land in question was in possession of the appellants. It was submitted that lands mentioned in Annexure 4 are government land and those lands

were transferred to the National Highways Department for laying National Highway 33. It is further submitted that since lands were Gair Mazarua

Khas land and in fact there was no acquisition proceeding, the appellants cannot claim any compensation.

9. Learned counsel for the National Highways, Ms. Sweety Topno, reiterated the submission of learned counsel for the State and submitted that

notification issued by Revenue and Land Reforms Department, Government of Jharkhand dated 14.05.2009 is not applicable to the present case

since the land was transferred to the National Highway for laying the road and the same is governed by The National Highways Act, 1956.

10. We have carefully considered the submission of learned counsel for the parties and perused the order of the learned Single Judge and also the

materials available on record.

11. The appellants claim compensation mainly on two grounds; (i) that they have been in possession of Gair Mazarua Khas land of Khata No. 84,

Plot No. 171, area 3.10 acres of village Kaitha in pursuance of Hukumnama of the year 1924-25 and for that they have been paying rent to the

government and (ii) as per notification issued by Revenue and Land Reforms Department, Government of Jharkhand dated 14.05.2009,

compensation is payable to all the occupants of Gair Mazarua Khas land, who is in possession of the land for more than 30 years.

12. Even though the appellants claim that they have been in possession of Khata No. 84, Plot No. 171 for more than 30 years prior to transfer of

land to the National Highways in 2010, as per Annexure 6, the appellants seem to have produced the rent receipts only up-to 1984. The

appellants have not produced any other document to show that they were in continuous possession of the Gair Mazarua Khas land of Khata No.

84, Plot No. 171 for more than 30 years prior to transfer of the land to the National Highways Department in 2010. According to the State-

respondents the land is Gair Mazarua Khas land and the State-respondents are denying the possession and title of the appellants. In the

supplementary counter affidavit filed by the State-respondents, genuineness of Annexure-6 is also disputed. The State-respondents also contended

that the appellants are not fulfilling the conditions as envisaged in the notification issued by Revenue and Land Reforms Department, Government of

Jharkhand dated 14.05.2009.

13. Placing reliance upon the judgment rendered in the case of Sharda Devi Vs. State of Bihar and Another, , learned counsel for the appellants

submitted that State/Revenue Authorities has got no right to deny the title/possession of the appellants and the authorities ought to have referred the

matter to National Highways and National Highways Authorities ought to have considered the case in accordance with Section 3H(4) of the Act.

14. By perusal of Section 3H(4) of The National Highways Act, 1956, it is seen that Section 3H(4) deals with only the question of apportionment

of the amount or any part thereof when there is any dispute arises. Since in this case the ownership/possession of the appellants are denied, the

appellants cannot contend that the matter ought to have been referred to the National Highways Authorities for deciding the matter under Section

3H(4) of the Act.

15. Since the State-respondent is disputing the title and possession of the appellants, it is for the appellants to establish their right/possession in the

said land to enable them to claim compensation by adducing oral and documentary evidence. Since disputed questions of facts are involved

regarding the right/possession of the appellants, the Writ Court cannot go into such disputed questions of fact. It is for the appellants to establish

their right/possession over Plot No. 171 of Khata No. 84 in the Civil Court and then claim compensation.

16. In the facts and circumstances, the learned Single Judge has rightly directed the appellants to approach the competent Civil Court to establish

their title, ownership and possession. This Letters Patent Appeal is disposed of granting liberty to the appellants to approach the Civil Court as

directed by learned Single Judge. We make it clear that the Writ Court as well as this Court have not expressed any opinion on the merit of the

case.