

(2003) 12 PAT CK 0080

Patna High Court

Case No: Appeal from Appellate Decree No. 385 of 1989

Gaya Regional Development
Authority

APPELLANT

Vs

Gulam Md. Hashmi and Others

RESPONDENT

Date of Decision: Dec. 17, 2003

Acts Referred:

- Administration of Evacuee Property Act, 1950 - Section 10, 10(2), 2, 40, 7A
- Bihar Land Reforms Act, 1950 - Section 3(3)
- Land Acquisition Act, 1894 - Section 4(1), 6(3)

Citation: (2004) 2 PLJR 220

Hon'ble Judges: A.K. Verma, J

Bench: Single Bench

Advocate: Sujit Kr. Sinha, Sanjay Kumar and Kiran Bala Sahay, for the Appellant; Shashi Shekhar Dwivedi and Sangeeta Sharma for Respondent No. 1 and A.P. Jittu, for State of Bihar, for the Respondent

Final Decision: Allowed

Judgement

A.K. Verma, J.

The Appellant Gaya Regional Development Authority has filed this Second Appeal against the judgment and decree dated 31.5.1989 passed in Title Appeal No. 13 of 1986/61 of 1985 by the 3rd Additional District Judge, Gaya, whereby the learned Additional District Judge has dismissed the Title Appeal filed by the Gaya Regional Development Authority and confirmed the judgment and decree passed by the Additional Munsif II, Gaya in Title Suit No. 3 of 1985/118 of 1980. The Plaintiff Ghulam Mohammad Hashmi had filed Title Suit No. 118 of 1980 for a decree for injunction restraining the Defendants. (The State of Bihar & others) from disturbing the possession of the Plaintiff over 22-1/2 decimals of land of plot No. 14759 at Gowalbigha P.S. Civil Lines District Gaya and also for restituting the Plaintiff over the said land, The learned Addl. Munsif had decreed the suit of the Plaintiff.

2. In short the case of the Plaintiff Respondent is that Mahboob Alam and Siddique Alam both were sons of Md. Abdul Hafeez and possessed various properties, including plot No. 14759 measuring 45 decimals and plot No. 4563 measuring 1 acre 25 decimals at Alamgirpur (Gowal Bigha), Gaya. Mahboob Alam predeceased his brother Siddique Alam in 1957 leaving behind Anjuman Ara his only daughter and the properties of Mahboob Alam devolved on his daughter and the brother, Siddique Alam created a Wakf in respect of some of his properties including 62 decimals of plot No. 4563 and it was registered in the Wakf Board. Anjuman Ara and Siddique Alam migrated to Pakistan and they were declared evacuee and their properties were declared as evacuee property. 22-1/2 decimals of plot No. 14759, share of Siddique Alam was also declared evacuee property and it vested in the Custodian. Some persons claiming raiyati settlements in their favour from Siddique Alam had challenged the validity of the declaration made in Case No. 54 of 1955 before the Asst. Custodian, who rejected their prayer. In appeal, the Custodian upheld the order and the revision before the Custodian General also failed. The Plaintiff purchased in auction on 16.7.1973, 22-1/2 decimals of plot No. 14759 from the Evacuee Department and he was delivered possession of it.

3. During March, 1963, a proceeding for acquisition of some lands including that of plot Nos. 4563 and 14759 under Slum Clearance Scheme of Gayawal Bigha was initiated in the name of Mahboob Alam who was dead and his daughter and brother had been declared evacuee and the lands seems to have been acquired for Gaya Improvement Trust. No notice was served in the name of Siddique Alam or Anjuman Ara Begum or the Custodian of evacuee property. Gaya Improvement Trust has alienated some of the properties acquired to different persons on hire and purchase basis. 22-1/2 decimals of plot No. 14759 has not been transferred as yet. According to the Plaintiff, the land acquisition proceeding was illegal and the Gaya Improvement Trust or its transferee did not acquire any title or possession over the land.

4. A written statement had been filed on behalf of Defendant No. 2. The original Defendant No. 2 was the Gaya Improvement Trust, Gaya through its Chairman and the plaint was amended under order dated 12.9.1983 of the learned Munsif as Regional Development Authority through its Chairman, Gaya, as Defendant No. 2. According to this Defendant the suit is not maintainable in absence of legal and valid notice as required under the provisions of Improvement Trust Act or the Regional Development Authority Act. The entire area including the suit plots were declared as Slum area and for its clearance the Defendant proposed a Slum Clearance Scheme at Gayawal Bigha and after proper survey it was sent to the Govt. for approval and sanction, which was approved and sanctioned by the Government. In absence of any objection it was made final. Thereafter award was made and possession was taken by the Collector and possession of the entire acquired land including the suit land was handed over to this Defendant on 13.3.1964 and since then Defendant No. 2 is in possession of the suit land exclusively and openly as

owner of the said plots. As required under the Rules and by-laws under the Bihar Town Planning and Improvement Trust Act then in force the said acquired lands were demarcated and levelled and developed by providing roads, drainage, water supply and electricity. Thereafter a plan was prepared for the entire area by dividing it into different plots, sub-plots giving improvement trust numbers. On many plots houses were constructed by the trust and transferred and the remaining plots were notified for sale. The suit plots were never declared evacuee property and it could not have been declared evacuee property after June 1954 and the alleged declaration and the auction purchase are illegal and void and cannot be enforced. The property belonged to Mahboob Alam, whose name was Syed Noor Haider @ Mahboob Alam Khan. Syed Noor Haider @ Mahboob Alam Khan never migrated to Pakistan and he died at Patna in December, 1959. After vesting of his estate in the State of Bihar, he had filed return u/s 3(Kha)(3) of the Bihar Land Reforms Act on 27.12.1954, which was subsequently authenticated by affidavit sworn by his duly authorised general Power of Attorney holder Sri Naseem Ahmad, Advocate, Patna. At the time of death of Mahboob Alam, who had died in December, 1959 both his daughter Anjuman Ara and said Siddique Alam had already migrated to Pakistan and so they could not inherit his property which he had left after his death in India. The property of Mahboob Alam specially the plots in suit were never declared as evacuee properties and the alleged papers of auction sale and other connected documents are all forged and fabricated concocted for the purpose of grabbing the suit property. The land of plot No. 14759 is the land of Mahboob Alam and no part of it was declared as evacuee property and it had not vested with the Custodian.

5. The following substantial questions of law had been formulated in this Appeal:

- (i) Whether the provisions of Land Acquisition Act and Administration of Evacuee Property Act are not in conflict with each other?
- (ii) Whether suit for injunction simplicitor is maintainable by the Plaintiff-Respondent who had purchased 22-1/2 decimals of the disputed land in 1973 when this land was already acquired by the State of Bihar for slum clearance in 1964 and possession thereof was given to the Defendant Appellant?
- (iii) Whether the fact that the land was acquired for a public purpose will become conclusive evidence u/s 6(3) of the Land Acquisition Act and whether the same cannot be challenged in a subsequent suit?
- (iv) Whether the Plaintiff's suit was barred by limitation and adverse possession since it was filed after 16 years of land acquisition proceeding?
- (v) Whether the land acquisition proceeding can be started against a dead person?

6. It was argued by the learned lawyer for the Appellant that the property was never declared as evacuee property and the possession of land was handed over to Gaya Improvement Trust on 23.3.1963 by State of Bihar and the land demarcated and

developed by Gaya Improvement Trust. The contention of the learned lawyer for the Appellant was that the Plaintiff claims the land on basis of auction purchase in the year 1973 as evacuee property and according to the pleadings of the parties Mahboob Alam, brother of Siddique Alam and father of Anjuman Ara had died in the year 1957 or 1959 and when Mahboob Alam was alive at the time when Siddique

Alarm and Anjuman Ara went to Pakistan, their properties went to Mahboob Alam and there is no question of the property becoming an evacuee property.

7. According to Section 2(f) of the Administration of Evacuee Property Act (hereinafter called the Act) evacuee property means any property of an evacuee whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity and includes any property which has been obtained by any person from an evacuee after the 14th, day of August, 1947 by any mode of transfer which is not effective by reason of the provisions contained in Section 40. According to Section 40 of the Act no transfer made after the 14th day of August, 1947 but before the 7th day of May, 1954 by or on behalf of any person in any manner whatsoever of any property belonging to him shall be effective so as to confer any rights or remedies in respect of the transfer on the parties thereto or any person claiming under them or either of them, if, at any time after the transfer, the transferor becomes an evacuee within the meaning of Section 2 or the property of the transferor is declared or notified to be evacuee property within the meaning of this Act, unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act.

8. It has been stated in the plaint of the Plaintiff Ghulam Md. Hashmi, who is Respondent in this appeal, that the Plaintiff had purchased the land in auction on 16.7.1973 from the evacuee department. According to the statement made in the plaint, Mahboob Alam predeceased his brother Siddique Alam in 1957 leaving behind Anjuman Ara his only daughter and the properties belonging to Mahboob Alam devolved after his death on his daughter and the brother. This clearly shows that Mahboob Alam had not died before 1957, According to the written statement of Defendant No. 2 Mahboob Alam had died at Patna in December, 1959. Section 40 of the Act relates to the transfer made after the 14th day of August, 1947 but before the 7th day of May, 1954. When Mahboob Alam was alive during that period and according to the pleadings of the parties he had not died before 1957 and he was in India, the suit land is not evacuee property. According to Section 7-A of the Act notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954. Admittedly, Mahboob Alam was alive at least till 1957.

9. It was argued by the learned lawyer for the Respondent No. 1 that in the land acquisition proceedings regarding the land in question, no plot No. has been given. The contention of the learned lawyer appearing on behalf of the State, Respondent No. 2 was that both the Courts below have not considered how the property was

declared as evacuee property. It was also submitted by him that land was acquired by the Government in 1963. It has been stated in the plaint itself that during March 1963, a proceeding for acquisition of some lands including that of plot Nos. 4563 and 14759 under Slum Clearance Scheme of Gayawal Bigha was initiated in the name of Mahboob Alam who was dead. This shows that the land acquisition proceedings in respect of the suit land had started in the year 1963 i.e. admittedly much after 7th day of May 1954, The Plaintiff claims the land by virtue of auction purchase on 16.7.1973. When the land had already been acquired in 1963, it is surprising how it could be sold in auction in 1973. In the written statement of Defendants No. 2, it has been stated that Syed Noor Haider @ Mahboob Alam Khan never migrated to Pakistan and he died at Patna in December, 1959. It has been stated in the written statement that after the vesting of his estate in the State of Bihar, it was he who filed return u/s 3 (Kha)(3) of the Bihar Land Reforms Act on 27.12.1954, which was subsequently authenticated by affidavit sworn by his duly authorised general power of attorney holder Sri Naseem Ahmad, Advocate, Patna.

10. Ext. F is an affidavit of Naseem Ahmad, Advocate. It has been stated in the affidavit dated 21.5.1963 that he is the legally constituted attorney of Anjuman Ara @ Ahrnadi daughter of Late Syed Noor Haider @ Khan Bahadur Syed Mahboob Alam of village Pinjora P.S., Jehanabad, District Gaya vide registered power of attorney dated 2.4.1960 executed by Anjuman Ara in favour of the deponent being deed No. 177 Book 3 Volume No. 4 Page No. 406 to 414 dated 26.4.1960. It has also been stated in the affidavit that Jamabandi return was filed on behalf of Syed Noor Haider aforesaid who died a natural death at Patna after filing the return Jamabandi leaving behind her only daughter Anjuman Ara aforesaid the legal heir and that her name was mutated on 9.11.1961 by order of the B.D.O. Kako in Case No. 510 Kako.

11. It was argued by the learned lawyer for the State the Plaintiff has stated in the plaint that the Plaintiff had purchased the land in auction on 16.7.1973 from the evacuee department and it has also been stated that the cause of action for the suit arose on 17.9.1973 when the Plaintiff purchased the land and was granted sale certificate for custodian. It was also argued by him that according to proviso to Section 10(2)(O) of the Act, the Custodian cannot sell any immoveable property of the evacuee except with the previous approval of the Custodian General and in the present case. there is nothing to show that auction sale was made by the approval of Custodian General. Section 10 of the Act relates to powers and duties of the Custodian General. It was submitted by the learned lawyer for the State that according to Section 4(1) of the Land Acquisition Act whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

12. Ext. H is notification No. 3102 LSG dated 23.3.1963 regarding sanction to the rebuilding and housing accommodation schemes in respect of each of the areas in the Gaya municipality in the District of Gaya as described in schedule. The schedule includes the area in respect of the rebuilding and housing accommodation scheme in Mohalla Gawal Bigha in Ward No. IX. Ext. D/1 is map of municipal survey Gawal Bigha Housing Accommodation Scheme. This includes plot No. 14759. Ext. G is certificate of possession of land made over to the parties on whose behalf it had been acquired. This shows that on 13th March 1964 delivery of possession of the land was made over at the hands of Sri. S.M. Faruq, Overseer, G.I.T. Gaya of 7.406 acres of land situated in village Alamgirpur No. 7, Mohalla Gawal Bigha, Pargana Pahra, Thana Gaya Town, District Gaya, which had been acquired under declaration No. 3102 L.S.G. dated the 23rd March, 63 for the purpose of Slum Clearance Scheme, Gawal Bigha along with a plan on blue print. This supports the case of the Appellant.

13. Section 40 of the Act relates to the transfer made after the 14th day of August, 1947, but before the 7th Day of May, 1954. According to the plaintiff, during March, 1963 a proceeding for acquisition of some lands including that of plot Nos. 4563 and 14759 under Slum Clearance Scheme of Gayawal Bigha was initiated in the name of Mahboob Alam, who was dead. So according to the Plaintiff himself the proceeding for acquisition of land was initiated in 1963 i.e. after 7th day of May, 1954. According to Section 7-A of the Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954. According to pleadings of the parties Mahboob Alam had not died before 1957., In the facts and circumstances of this case the acquisition of the land is valid. Ext. G shows that the acquisition of the land was made for the purpose of Slum Clearance Scheme Gawal Bigha and the delivery of possession was made over to Sri S.M. Faruq; Overseer G.I.T., Gaya. The land was acquired for public purpose. After acquisition of the land the delivery of possession was made over on 13.3.1964 and the Plaintiff claims to have purchased the land on 16.7.1973 in auction and he had filed the Title Suit on 1.12.1980. So the Plaintiff had filed the Title Suit after more than 16 years of acquisition of land by the Government and its delivery of possession to the Overseer, Gaya Improvement Trust.

14. In the facts and circumstances of the case, the Plaintiff is not entitled to a decree, as prayed for. In the facts and circumstances of the case the judgment and decree of the Court below is not tenable in law. Accordingly, this second Appeal is allowed. The judgment and decree of the Court below is set aside and the Title Suit of the Plaintiff is dismissed.