

SUPREME COURT OF INDIA

Jharkhnad State Hng.Board & Anr.

Vs.

Akhileshwar Singh & Ors.

C.A.No.3777 of 2011

(Harjit Singh Bedi and Chandramauli Kr. Prasad,JJ.,)

20.04.2011

ORDER

SLP(Civil)No. 23216 of 2009

1. Jharkhand State Housing Board and its functionary, aggrieved by the order dated 4th of March, 2009 passed by the Division Bench of the Jharkhand High Court in LPA No. 248 of 2008 affirming the judgment and order dated 13th of May, 2008 passed by the learned Single Judge in W.P. (C) No. 216 of 2008, have preferred this special leave petition.

2. Leave granted.

3. Bereft of unnecessary details facts giving rise to the present appeal are that a Notification dated 22nd of July, 1964 was issued under Section 4 of the Land Acquisition Act for acquisition of different plots of land in Mouja Hirapur within the district of Dhanbad in the State of Jharkhand. Thereafter Gazette Notification under Section 6 of the Land Acquisition Act was issued on 17th of August, 1965. The acquisition was for the purpose of housing scheme to be executed by the predecessor-in-interest of the appellants i.e. Bihar State Housing Board. Ultimately an award was made in the year 1976 and the predecessor-in-interest of the appellants was handed over the possession of the land measuring 66.44 acres of land. Shri Ram Narayan Aggarwala, the predecessor-in-interest of the writ petitioner-respondent No. 1 owned out of the acquired land an area of 0.36 acres of land i.e. 4 decimals of Plot No. 397, 3 decimals of Plot No. 398 and 29 decimals of Plot No. 399 of Mauja Hirapur. Separate award i.e. Award No. 80 was made in respect of this land. However, physical possession in respect of this 0.36 acres of land belonging to Shri Ram Narayan Aggarwala could not be taken, then as it had structure over it and was in occupation of said Shri Ram Narayan Aggarwala. Said Shri Ram Narayan Aggarwala did not accept the aforesaid award and filed an application for reference to the court of competent jurisdiction for enhancement of the amount of compensation. He further did not receive the amount of compensation and filed Writ Petition No. 212 of 1976 before the Patna High Court challenging the acquisition of the aforesaid piece of land. A Division Bench of the Patna

High Court by its judgment dated 29th of April, 1997 dismissed the writ petition and upheld the acquisition.

4. Aforesaid Shri Ram Narayan Aggarwala thereafter sold the land to Shri Sital Singh, Kirani Singh, Sudama Devi and Pukari Devi, predecessor-in-interest of the writ petitioner-respondent No. 1 herein, hereinafter referred to as the writ petitioner on 16th of January, 1986. The purchasers approached the State Government for de-notification of the land from acquisition under Section 48 (1) of the Land Acquisition Act and when did not succeed, filed writ petition bearing CWJC No. 3047 of 1992 (R) before the Ranchi Bench of the Patna High Court challenging the acquisition itself. A Division Bench of the Patna High Court by its order dated 20th of October, 1992 dismissed the petition as withdrawn. As the writ petitioner was illegally in possession of the land acquired, the Bihar State Housing Board filed petition for his eviction under the provisions of the Bihar State Housing Board Act. The competent officer under the said Act by its order dated 1st of June, 1999 ordered eviction of the writ-petitioner and also directed for removal of the unauthorized construction over the said land. Aggrieved by the order of the competent officer he preferred appeal and the same was dismissed by the appellate authority by order dated 15th of February, 2000. The appellant Jharkhand State Housing Board thereafter by its letter dated 5th of November, 2007 asked the writ-petitioner to vacate and remove the encroachment and aggrieved by the same, he preferred W.P.(C) No. 216 of 2008 before the High Court inter alia praying to issue notification for release of the land. A learned Single Judge of the High Court by its order dated 4th of May, 2008 disposed of the writ petition with a direction to the State Government to take final decision on the proposal of de-notification of the land and till such a decision is taken, not to take any coercive action for ejecting him. Aggrieved by the same appellants preferred appeal and the Division Bench of the High Court by the impugned order dismissed the same.

5. Mr. V. Shekhar, Senior Advocate appearing on behalf of the appellants submits that several attempts were made to question the legality and validity of the acquisition but the same was upheld and, in fact, writ petitioner had not purchased the property but a litigation. He points out that an order of eviction was passed against him by the competent officer under the Bihar State Housing Board Act and the challenge to the same had failed and, therefore, he had no right to challenge the consequential order issued by the appellants to vacate and remove the encroachment from the acquired land. He further submits that the State Government considered the proposal of the Deputy Commissioner for de- notification of the land and the State Government having turned down the same, writ petitioner cannot compel the State Government to de-notify the acquisition.

6. Mr. Ajit Kumar Sinha, Senior Advocate appearing on behalf of the respondent No. 1 submits that as the proposal of the de-notification of the land from acquisition was made by the Deputy Commissioner, the State Government was obliged to take a final decision in that regard and the High Court did not err in issuing such a direction. He further submits that the land over which the respondent had made construction was never acquired and, therefore, the respondent cannot be asked to vacate the same.

7. We have bestowed our consideration to the rival submissions and we find substance in the submission of the learned counsel for the appellants. Admittedly the land in question initially belonged to Shri Ram Narayan Aggarwala and was purchased by the predecessor-in-interest of writ petitioner. Shri Ram Narayan Aggarwala had challenged the acquisition by filing a writ petition which was dismissed. Thereafter, according to the case of the writ petitioner himself, it is his predecessor-in-interest who purchased the property from Shri Ram Narayan Aggarwala. An attempt was made by them also to assail the acquisition by filing a writ petition but they did not succeed. Thereafter, the competent officer under the Bihar State Housing Board Act ordered eviction of the respondent as also for removal of the unauthorized construction. Aggrieved by the same he preferred appeal but the same was dismissed.

8. In the light of the aforesaid order of the competent officer, writ petitioner was served with the letter dated 5th of November, 2007 asking him to vacate and remove the construction. He did not challenge the orders of competent or appellate authority passed under the Bihar Housing Board Act, directing removal of encroachment but after the letter dated 5th of November, 2007 by which he was asked to vacate and remove the encroachment, he preferred the writ petition challenging the same inter alia alleging that the proposal for de-notification of the land is pending before the State Government and, as such, direction to vacate and remove the construction is illegal. From the facts stated above it is evident that the respondent instead of purchasing the property, in sum and substance, had purchased a litigation and attempted to deny the possession to the rightful owner by hook or crook. He has no right to seek de-notification of the land acquired. In any view of the matter said power had been conferred on the State Government and from the statement made in the counter affidavit filed by the State, same has been refused and, therefore, in our opinion, writ petitioner is not entitled for any relief.

9. Mr. Sinha, while resisting the relief prayed for by the appellants had submitted that the land in question was never acquired. This argument has only been noted to be rejected. Admittedly, the writ petitioner had purchased the acquired property from Shri Ram Narayan Aggarwala. Had it not been so, there was no occasion for said Shri Ram Narayan Aggarwala to challenge the acquisition. Not only that after the purchase of the property an attempt was made to challenge the acquisition by the predecessor-in-interest of the writ petitioner also but that had also failed. Therefore, there is no escape from the conclusion that the land in question was acquired under the Land Acquisition Act. In the facts and circumstances of the case we are of the opinion that the direction given in the impugned order is absolutely uncalled for.

10. In the result, the appeal is allowed, impugned judgment and order of the High Court is set aside and the writ petition stands dismissed. There shall be no order as to costs.