PATNA HIGH COURT

P. Girdharan Prasad Missir

Vs

State of Bihar

Misc. Judicial Case No. 620 of 1964

(R.L. Narasimham, C.J. and K.K. Dutta, J.)

28.07.1966

JUDGMENT

R.L. Narasimham, C.J.

1. This is an application under Articles 226 and 227 of the Constitution to quash the entire land acquisition proceeding, No. 23 of 1959-60 of Champaran Collectorate, the award given on the 24th, July, 1962, and the delivery of possession made in favour of respondent no. 2. and for other consequential reliefs.

2. The disputed plots are plots nos. 449 and 447 of khata no. 29, tauji no. 951, of village Narapur, Police station Begaha, in the district of Champaran.

3. The recorded tenants of the two plots were some Ahirs who had usufructuarily mortgaged them with one Bindbasini Sao who assigned the mortgage in favour of Ganga Devi Sugar Mills. The said Mills sold the mill along with the lands to respondent no. 2, the North Bihar Sugar Mills, sometime in 1950. Thus respondent no. 2 is the successor-in-interest of the original usufructuary mortgagee. The petitioners purchased the equity of redemption from the mortgagors sometime in 1936, and thus became the mortgagors of the property. In Title suit no. 186 of 1947 brought by the petitioners in the Court of the Munsif of Bettiah, a decree was obtained and the Court directed delivery of possession of the disputed lands to the petitioners. An appeal against the Munsif's Judgement was dismissed by the Additional Subordinate Judge of Motihari. Thereupon respondent no. 2 filed a second appeal. No. 669 of 1958, in the High Court. and that appeal was disposed of on the 20th February, 1962, (Annexure-E), by Ahmad, J., who, while affirming the judgements of the lower courts, gave further extension of time for a period of three months for giving up delivery of possession of plot no. 449 to the plaintiff. Though both the plots mentioned above were in dispute, the real controversy was as regards plot no. 449, on which alone some of the machinery of the sugar mill, such as chimney, spray pond, etc., had been installed. So far as plot no. 447 is concerned, it was urged by respondent no. 2 that it was in the possession of the petitioners until it was duly delivered to respondent no. 2 on the 27th, August, 1962. This fact is not admitted by the petitioners. It is unnecessary to discuss this point at length as nothing turns on it. This plot is said to be a mere sugarcane field with no structures or

machineries standing on the same.

4. Apprehending that if the decree for delivery of possession be allowed to stand, respondent no. 2 may be put to very heavy financial loss due to the dismantling of the machinery and closure of the sugar mill, the latter applied to the Collector of Champaran for acquiring both the plots for the mill, which was a "company" as defined in clause (e) of Section 3 of the Land Acquisition Act. The application was actually made on the 7th, June, 1955, during the pendency of the aforesaid mortgage litigation. Objections of the parties were heard and eventually the Land Acquisition Officer by his award dated the 24th July, 1962, completed the acquisition proceeding and directed payment of compensation to various parties interested in the plots, namely, (1) the State of Bihar, (2) the petitioners, and (3) respondent no. 2. The compensation payable to respondent no. 2 was estimated at Rs. 2,55,6B4/73 (see Annexure-D1). This large amount of compensation to respondent no. 2 was due mainly to the cost of the machineries and other structures standing on the land.
It is admitted by the petitioners in paragraph 31 of their petition that this sum was actually paid to respondent no. 2 on the 31st, July 1962. Apart from paying the said compensation amount, the Collector took steps to deliver possession of the lands also to the respondents on the 27th August, 1962, as admitted in paragraph 32 of the petition. To some extent the payment of compensation and delivery of possession to respondent no. 2 was nominal inasmuch as the entire acquisition proceedings were initiated at the instance of respondent no. 2 for the Company's benefit and the entire cost of the acquisition was borne by that respondent. Similarly plot no. 449 was already in the possession of the Company as mortgagee from before. Hence the delivery of possession in pursuance of the completion of the acquisition proceedings on the 27th August, 1962, was symbolical, indicating that there was a change in the nature of possession of respondent no. 2 from that of a mere mortgagee to that of a Company to whom possession was delivered as full owner under the provisions of the Land Acquisition Act.

5. In the meantime the petitioners as mortgagor-decreeholders had filed an execution case, No. 327 of 1958, for execution of the decree for delivery of possession. Respondent no. 2 objected to the execution of the decree under Section 47, Civil Procedure Code mainly on the ground that the decree for delivery of possession became unexecutable in view of the termination of the land acquisition proceedings in favor of the Company in consequence of which both the title and the right of the petitioners to claim possession were completely extinguished. The executing court started a miscellaneous case No. 140 of 1962, and disposed of it on the 10th September, 1962 (Annexure-F), allowing the objection of the judgment-debtor (respondent no. 2) and holding that the decree was not executable. A perusal of the Judgment of the learned Munsif (Annexure-F) shows that the main point in controversy before him was point no. 3 which was as follows :

> "Whether there has been any proceeding under the provisions of the law of Land Acquisition and Compensation (Act 1 of 1894) and whether the claim of the decree-holder opposite party for recovery of possession is barred on account of any such proceeding. It was the specific case of the petitioners before the executing court that the entire acquisition proceeding was started at the instance of respondent no. 2 for the benefit of the Company. One of the main contentions raised before the executing court was that the land acquisition proceeding was not a *bona fide* proceeding, that it was started with the evil design to make the decree of the opposite party (here the petitioners) ineffective

(see paragraph 11 of Annexure-F). The learned Munsif rejected this contention and held that the acquisition proceeding was not invalid. On appeal the learned 2nd Additional Subordinate Judge, by his order dated the 25th, July, 1963, (Annexure-G). maintained the order of the original court. Before him also one of the main points for consideration was point no. 1, namely, whether the land acquisition proceeding was illegal ab initio. The appellate court also rejected this contention. The appellate Judgment was delivered on the 26th July, 1963, and this writ application was filed on the 12th March, 1964. But the petitioners filed a second appeal against that Judgment, Second appeal no 250 of 1963, which was also dismissed by Untwalia, J. on the 17th April 1964 (Annexure-X)

6. The petitioners' main contention in support of this application is that the entire land acquisition proceeding is void ab initio, having been made mala fide during the pendency of the litigation between the petitioners and respondent no. 2 solely for the purpose of depriving the petitioners of the fruits of the decree which they had obtained after protracted litigation with respondent no 2. It was, therefore, urged that the land acquisition proceeding was a mere colourable device to achieve a collateral mala fide purpose. The legality of the acquisition proceeding was further challenged on the ground that on a fair construction of Sections 40 and 41 of the Land Acquisition Act, land can be acquired for a company only for the purpose of construction of buildings and works of the Company referred to in Sub-Section (1) of Section 40 of the Act and that such acquisition cannot be made of lands which are already in possession of the Company (though in a different capacity) and where the Company's machineries had already been installed.

7. Mr. Lal Narain Sinha for the respondents while challenging the correctness of the aforesaid contentions further raised the following two preliminary objections to the maintainability of this writ petition :

1. The petitioners are barred by the principle of res judicata from raising any question about the legality of the land acquisition proceeding in view of the concurrent decision of the Munsif in Miscellaneous Case no. 140 of 1962 (Annexure-F), of the appellate authority in Miscellaneous Appeal no. 55/3 of 1962-63 (Annexure-G) and that of the High Court in Second Appeal no. 250 of 1963 (Annexure-X).

2. In any case, the present writ petition was filed after undue delay and that delay has not been satisfactorily explained. In my opinion all these contentions raised by Mr. Lal Narain Sinha must succeed.

8. Taking first the question of undue delay. I find that though the petitioners were fully aware of the termination of the land acquisition proceeding by the end of July, 1962, and had actually filed an application under Section 18 of the Land Acquisition Act as early as 31st July, 1962, for reference to the District Judge against the award. They did not care to challenge the legality of the award either by way of writ petition or by way of another suit till seventeen months later. The petitioners have clearly admitted in paragraphs 30 and 32 of their petition that they were fully aware as early as July-August, 1962 not only about the giving of the award in the land acquisition proceeding but also of the delivery of possession by the Collector to the respondent Company on the 27th August, 1962. They should, therefore have immediately challenged the

validity of the award by an appropriate proceeding. No explanation has been given for this delay of more than seventeen months. On the other hand, while challenging the quantum of the compensation awarded to them by applying for a reference to the District Judge under Section 18 of that Act, the petitioners challenged the legality of the land acquisition proceeding only in the execution proceeding, first before the Munsif of Bettiah and then on appeal before the Additional Subordinate Judge and then by way of second appeal before the High Court. This unexplained delay is itself a good ground for dismissing this writ petition. Secondly, the principle of res judicata is an insurmountable hurdle to the petitioners getting any relief here now. I have briefly described the main points in controversy between the petitioners and respondent no. 2 in the three courts where the executability of the decree obtained by the plaintiffs was under challenge in an application under Section 47, Code of Civil Procedure. The main ground on which the decree was alleged to be nonexecutable was that by virtue of the land acquisition proceeding and its due termination the petitioners' right to execute the decree for delivery of possession was completely extinguished. The *bona fides* of the acquisition proceeding was challenged on grounds almost identical with those taken here. But these were all rejected both by the executing court (Munsif, Bettiah) on the 10th September, 1962, and by the 2nd Additional Subordinate Judge in appeal on the 26th July, 1963. It is true that in second appeal, No. 250 of 1963, the petitioner did not again press the question about the invalidity of the acquisition proceedings, but as that second appeal was dismissed and the lower courts' orders were confirmed, the decision of this vital issue by the lower courts will operate as res judicata.

9. Mr. Ghosh for the petitioners made a very ingenious attempt to escape this difficulty by saying that the Government of Bihar was not a party in the said litigation, whereas that Government is the main party in the present litigation, being respondent no. 1. Hence it was urged that though the issue as to whether the land acquisition proceeding was void ab initio or not may be res judicata as between the petitioners on the one hand and respondent no. 2 on the other, it will not be res judicata as between the petitioners and respondent no. 1, and it was open to the petitioners to raise this issue here.

10. There would have been some force in the contention of Mr. Ghosh if the interest of respondent no. 1 (Government of Bihar) and that of respondent no. 2 in respect of the disputed lands were different. But here, on the case of the petitioners themselves, respondents nos. 1 and 2 have no conflicting interests. The plots were acquired for respondent no. 2 under the provisions of the Land Acquisition Act. The entire cost of acquisition was borne by respondent no 2 and the agreement required by Section 41 of that Act was also duly entered into and published in the Bihar Gazette (vide notification no. D. L. A. CH 383/58-12910-B, dated the 20th December, 1958) dated the 31st December, 1958. It was the petitioners' contention all along in the said acquisition proceeding that the acquisition was made by the Government mala fide for the sake of respondent no. 2 with a view to enable the latter to nullify the decree for possession obtained by the petitioners. Thus it was the admitted case of all parties concerned that the real beneficiary for whom the acquisition proceeding was made was respondent no. 2. The Government of Bihar had no other interest on the lands except certain limited rights in the event of the failure of respondent no. 2 to fulfil the terms of the agreement mentioned above. It is true that by virtue of Section 16 of the Act the title initially vests in the Government free from encumbrances, and clause (2) of Section 41 of the Act which has been incorporated in the agreement between respondents nos. 1 and 2, envisages some sort of "transfer" of the lands by respondent no. 1 to respondent no. 2. But the mode of such transfer depends on the law of the land. The provisions

of the Transfer of Property Act do not obviously apply to transfers made by Government in view of the provisions of the Government Grants Act, 1895. Hence no formal deed of transfer is required to be executed by the Government conveying title to the disputed land to respondent no. 2 after the title has vested in the State Government under Section 16. Paragraph 102 of the Executive Instructions issued under the provisions of the Land Acquisition Act only requires that where lands are acquired for a Company, possession should be handed over to the Company by the revenue authorities and a certificate of acknowledgment of possession should be obtained from the chief local representative of the Government department, local body or company, for whom land is acquired, and filed with the land acquisition case record. "Respondent no. 2 has filed before us a copy of the Order sheet of the land acquisition proceeding dated the 25th August, 1962, and 30th August, 1962 (Annexure-4) which shows that under the orders of the said officer the Kanungo, Sri B.N. Prasad, delivered possession of the two plots to respondent no. 2 on the 27th August, 1962. Two certificates of possession required by Form No. 17 (Annexures 5 and 5-1), one signed by the Kanungo certifying his giving of possession to respondent no. 2 of the plots and the other signed by one Sri Lalchand Chhajar, accountant of respondent no. 2, acknowledging receipt of possession of the two plots, were also filed. Thus, the acquisition for the company was completed, delivery of possession duly given, and the Government had no more interest in the property. They were not a necessary party in the said execution. The disputed lands were fully represented by respondent no. 2, and in the present proceeding also Government do not claim any interest in the lands apart from the interest of respondent no. 2.

11. Mr. Ray for the petitioners cited *Venkataseshayya v. Virayya*[1], which followed an earlier decision of the Allahabad High Court in *Mahabir Singh v. Narain Tewary*[2], and urged that even if the executing court, in an application under Section 47, Civil Procedure Code, held that a decree was not executable, that decision will not operate as res judicata in a subsequent litigation where the decree is challenged as a nullity. In my opinion, these decisions have no application whatsoever to the present case. It was nowhere urged either by respondent no. 1 or respondent no. 2 that the mortgage decree obtained by the petitioner was a nullity. I have already shown that the decree is fully respected and adequate compensation is provided for the petitioners out of recognition of the validity of the same. The non-excitability of the decree arose out of a subsequent event, namely, the completion of the acquisition proceedings after the decree had been passed, and the most important ground taken in support of the contention that the decree was not executable was that by virtue of the land acquisition proceedings the right, to recover possession was extinguished. In all subsequent litigations, therefore, where the petitioners challenged the validity of the land acquisition proceedings, this decision of the executing court will operate as res judicata, because that court had the undoubted competence to try this issue. It is only in those cases where the executing court dealt with a matter which had nothing to do with "execution, discharge or satisfaction" of a decree that its decision will not operate as res judicata. This principle has no application here.

12. Mr. Lal Narain Sinha further urged that even if the transfer of the title by respondent no. 1 to respondent no. 2 be assumed to be not yet complete, nevertheless the principle of res judicata should apply for the following reasons. The real beneficiary in the entire transaction was respondent no. 2, the acquisition having been made primarily for the benefit of the Company and the cost of acquisition also being borne by the Company. The position of the Government of Bihar would, therefore, be analogous to that of a constructive trustee under Section 82 of the Trusts Act, and the trust itself came to an end by virtue of Section 77 of that Act when the object

of the trust was achieved, namely, when after due termination of the acquisition proceeding the lands were handed over to the beneficiary. Hence a decision in a litigation between the beneficiary and a third party will operate as res judicata in a subsequent litigation between the third party and the trustee of the beneficiary, especially when on the date of the succeeding litigation the object of the trust had been achieved and the trust itself had been extinguished and the trustee was not claiming any right against the interest of the beneficiary. Though he could not cite any authority in support of this view, nevertheless the general rule that a decision in a suit in which an agent is a party will operate as res judicata against the principal and vice versa (see pages 218 and 219 of the Law of Res Judicata by Hukum Chand) would apply. As pointed out in Boer's "The Doctrine of Res Judicata" (1924 edition) at page 129, "two persons distinct in name, but substantially identical in title and interest constitute in law one and the same party for the purposes of estoppel by res judicata, at for all others." The decision of the acquisition proceedings, therefore, sperates us rea judicata and the petitioners will not be permitted to escape the rigors of this principle by starting new litigation and impleading some more unnecessary parties.

13. Mr. Ghosh thereupon further contended that the real beneficiaries were one public and not respondent no. 2. This argument does not require serious notice. There can be no doubt that the main beneficiary is respondent no. 2. It is true that as the machinery of the Land Acquisition Act was being utilised for the public also had to be safeguarded in the manner provided in Section 41 of that Act, and Section 42 further safeguards those interests by saying that those terms dealing with the rights of the public to use the works of the Company had the same effect as if they had formed part of the Act. But the rights of the public as mentioned in the terms of the agreement between respondents nos. 1 and 2 in the gazette notification mentioned above deal with ancillary matters only and do not in any way weaken the position of respondent no. 1 as the real beneficiary for whose sake and at whose expense the acquisition proceedings were completed.

14. As this court is not a final Court for the purpose of this litigation, I have thought it advisable to dispose of this writ petition on merits also Mr. Ghosh contended that the entire land acquisition proceeding was a fraud on the Act meant to deprive the petitioners of the fruit of their success in the protracted litigation. This argument is based on a complete misconception. The land acquisition proceeding was not meant to destroy the effect of the decree which the petitioners had obtained against respondent no. 2. The decree only extinguished the interest of the mortgagee and conferred on the petitioners the right to recover possession of the lands in the land acquisition proceeding these rights are fully recognized and adequate compensation is directed to be paid to the petitioners for the compulsory acquisition of those rights by the Government for the Company. Hence instead of nullifying the effect of the decree the acquisition proceedings give due effect to the same by recognizing the petitioners' rights and providing for adequate compensation for the extinguishment of those rights. The argument that the entire land acquisition proceeding is a colorable device to nullify the effect of the decree must, therefore, be rejected.

15. Secondly, it was contended that by virtue of Sub-Section (1) of Section 40, acquisition for a Company can be made only for the purpose of future construction on the lands and not where constructions have already been made. This argument also is based on incorrect appreciation of facts. It is not the case of the petitioners that the entire machinery of the Sugar Mill is located in plot 449. On the other hand, on a perusal of the application for acquisition made by the

respondents to the Collector (Annexure-H) on the 7th June, 1955, it is clear that chimney, spray pond and some other structures of the Mill were standing on that plot. In that application respondent no. 2 further stated in paragraph 13 : "The petitioner has to construct further structures for efficient running of the mill in plots nos. 447 and 449 and such extension is absolutely necessary in public interest. The previous constructions and proposed construction have been shown in the map attached and the same forms part of this application." In the deed of agreement between respondent no. 1 and respondent no.2 also, in the preamble the same idea is conveyed as follows : "Whereas for the purpose factory buildings, quarters and septic latrines for the workers the company has applied to the Government of Bihar for acquisition." Thus, the acquisition was asked for by the company for the purpose of expansion of the factory buildings and for construction of quarters and septic latrines for the workers. It is not correct to say that the entire construction work for the sugar Mill had been completed before acquisition and that the acquisition proceedings were asked for without any idea of making future constructions. It will be taking too narrow a view of the provisions of Sub-Section (1) of Section 40 of the Act to say that the words "construction of some building or work" or "erection of dwelling houses for workmen" mentioned therein apply only to future constructions and not to constructions already made on the land and those which may be made in future. The words "construction" or "erection" occurring in the various clauses of Sub-Section (1) of Section 40 should be construed to include reconstruction, additions and alterations to the existing constructions, etc.

16. Thirdly, it was urged that the acquisition was not for a public purpose but merely for the purpose of helping a person (here the company) to make profits. This argument, however, is no longer available. It is well known that sugar industry is one of the important industries of India engaged in the production of an essential commodity, and the fostering of the growth of that industry is undoubtedly for a public purpose. A company engaged in the manufacture of sugar would, therefore, come within the scope of clause (a) of Sub-Section (1) of Section 40 of the Act. Moreover, here apart from extending the construction of the factory premises, the acquisition has, been made for the purposes of building quarters and septic latrines for workers which will clearly come within the scope of clause (a) of Sub-Section (1) of Section 40. In my opinion, there can be no doubt that the purpose of the acquisition was a "public purpose" as required by Section 40 of the Land Acquisition Act.

17. It was then contended that land acquisition proceedings cannot be initiated in favour of a party who is already in possession of the lands. No authority has been cited in support of this view. If a person is in possession of a land, say as a lessee or mortgagee, with limited rights, there is no legal objection in his acquiring full rights over the land by acquisition proceedings, provided that the other conditions necessary for acquisition are satisfied. It is true that in such cases the delivery of possession required by Section 16 of the Act may become somewhat notional or symbolical, but as already pointed out, the nature of the possession before acquisition and the nature of the possession after acquisition are fundamentally different. I may in this connection refer to Sections 35 and 36 of the Act which relate to temporary occupation of land for public purpose either by the Government or by a Company. The proviso to Sub-Section (2) of Section 36 authorizes subsequent acquisition of the same land for the company as if it is needed permanently. Thus the Legislature has clearly envisaged a situation where a land which is already in the possession of a company, may have to be subsequently acquired under the provisions of the Act for the same Company. There is, therefore, nothing illegal in completing land acquisition proceedings in respect of the two plots, which, according to the petitioners, were already in the

possession of respondent no. 2 as mortgagees.

18. For these reasons, the writ petition is dismissed with costs. Hearing fee : Rs. 200/- payable to respondent no. 2.

Dutta, J.

19. I agree.

Petition dismissed.

Cases Referred.

[1] AIR 1958 And Pra 1 (PB)
[2] AIR 1931 All 490 (FB)