

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3203 OF 2012

State of Jharkhand and others

... Appellants

Versus

M/s. K.N. Farms and Industries (P) Ltd.

... Respondent

J U D G M E N T

G.S. SINGHVI, J.

1. This appeal is directed against order dated 26.10.2010 of the Division Bench of the Jharkhand High Court whereby the letters patent appeal filed by the appellants was dismissed and the direction given by the learned Single Judge in W.P. No.1546 of 2005 for issue of notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') and passing of an award after assessing value of the acquired land was upheld.

2. The facts which have been culled out from the pleadings of the parties are as under:

(i). After coming into force of the Bihar Land Reforms Act, 1950 (for short, 'the 1950 Act'), the ex-landlord Shri Kanai Lal Nandi settled 458.28 acres land of villages Gurajore and Darisai of Dhalbhum Sub Division, Singhbhum District (now known as Ghatisila Sub Division of East Singhbhum) in favour of the respondent, of which his own brother Kishori Mohan Nandi was the Managing Director and other kith and kins and one driver, namely, Shri B.C. Tudu, were the Directors.

(ii). After some time, the respondent executed an agreement dated 28.2.1960 with the Government of Bihar for the purchase of land described in the preceding sub-paragraph for rehabilitation of Kharia tribe. The relevant portions of the agreement are extracted below:

"This Indenture made this the 28th day of February, 1960 between K.N. Farms & Industries, Private, Limited, a Limited Company incorporated and registered under the Indian Companies Act, 1913 through Kishori Mohan Nandi son of Shri Krishna Chandra Nandi of Galudih, by caste Tili, by occupation cultivation of Galudih, P.S. Ghatsila, District Singhbhum, being the present Managing Director of the said Company Head Office at Galudih, P.S. Ghatsila, Pergana Dhalbhu, District Singhbhum, hereinafter called the Vendor, which terms shall, if not repugnant to the context, include its successors-in-office and assigns of the one part, and Government of Bihar hereinafter called the Purchaser, which term

unless repugnant to the context, shall mean and include his successor-in-office and assigns of the other part:

2. WHEREAS the Purchaser has decided to acquire a big farms and large tracts of agricultural lands in compact blocks for the purpose of rehabilitation of Kharias in Dhalbhum Sub-Division of the District of Singhbhum, under the Land Acquisition Act or by such other method of transfer as the Purchaser may hereinafter decide.

3. AND WHEREAS, the Purchaser has selected the lands belonging to the Vendor for the said purpose as specified in the Schedule annexed hereto.

4. AND WHEREAS the price of the said lands has been assessed by the Land Acquisition Officer as per Annexure 'A' with the consent of the parties and it has been agreed between the parties that the value of the land shall be the value assessed by the Land Acquisition Officer in Annexure 'A' plus 7 1/2% of the value of land to be transferred to the purchaser.

6. NOW THIS INDENTURES WITNESSETH that in consideration of the value of the lands and other assets as set forth above the Vendor hereby agree and bind himself to transfer the land mentioned in the Schedule below and deliver possession of the same to the Purchaser free from all encumbrances, together with all rights, easements and appurtenances, whatsoever to the said lands belonging or in any way appertaining, to hold the same unto and to the use of the said, PURCHASER absolutely and for ever.

7. The value of the land mentioned in the Schedule comes to Rs.81322/68 as per details given in Annexure 'B'.

8. AND the said Vendor for himself, his successors-in-office and assigns doth hereby covenant with the PURCHASER that he shall immediately on payment of the consideration mentioned in clauses 4 and 5 execute the Deed of Transfer in favour of the Purchaser and Vendor further agrees to transfer the land on the above price in any way that may suit the convenience of the Purchaser."

(iii). The respondent handed over possession of 334.65 acres land to Land Reforms Deputy Collector (LRDC) on 31.3.1960 and the same was distributed among the members of Kharia tribe.

(iv). After 8 months, Notification dated 9.12.1960 was issued under Section 4 of the 1894 Act for the acquisition of land measuring 334.65 acres. The declaration issued under Section 6 was published on 4.4.1961. Although, no award is shown to have been passed by the Land Acquisition Officer, two cases being LA Case No.6/61-62 and LA Case No.5/63-64 were registered in the matter. It is not clear from the record as to what was the fate of those cases.

(v). The State Government deposited Rs.81,322.68 with the District Land Acquisition Officer as the price of land, but, before the amount could be paid to the respondent, LRDC passed an order under Section 4(h) of the 1950 Act and annulled the settlement made by the ex-landlord in favour of the respondent. The appeal and the revision filed against the order of LRDC were dismissed by Deputy Commissioner, Singhbhum and Commissioner, South Chotanagpur Division, Ranchi respectively. C.W.J.C. No. 410 of 1978 filed by the respondent was allowed by the High Court on 30.6.1986 and the order passed for cancellation of the settlement was quashed.

(vi). After about 45 years of having entered into an agreement with the Government of Bihar, the respondent filed W.P. No.1546 of 2005 for issue of a direction to the appellants to pay compensation with interest and the cost of litigation by alleging that even though possession of the land was taken in 1960 but price had not been paid despite repeated representations / reminders. The nature of grievance made by the respondent is discernible from the averments contained in paragraph Nos. 16 to 20 of the writ petition, which are reproduced below:

“16. That the petitioner states that after giving a number of representations to the number of authorities, he ultimately received a copy of the letter dated 07.07.1995 addresses to the Director, welfare, Bihar, Patna, given by the District Welfare Officer, Singhbhum East, Jamshedpur after calculating the interest asked for sending the amount for making payment to the petitioner.

A photo copy of the aforesaid letter dated 07.07.1995 is annexed herewith and marked as Annexure - 5 to this writ petition.

17. That the petitioner states that, thereafter, he again received a copy of the letter dated 15.09.1995 addressed to the District Welfare Officer Singhbhum East Chaibasa given by the Joint Secretary State of Bihar (Welfare Department) for taking steps for payment to the petitioner.

A photo copy of the aforesaid letter dated 15.09.1995 is annexed herewith and marked as Annexure - 6 to this writ petition.

18. That the petitioner states that from the aforesaid two letters (contained in annexure - 5 and 6) it is clear that the said sum of Rs. 81,322.68 together with the interest has become a sum of Rs.

1,52,046.12 P for Village Darisa and Rs. 1,60,637.57 paisa for Village Gurajore only.

19. That the petitioner states that according to the agreement the petitioner is entitled the amount agreed and a sum of Rs. 15% over and above the total amount arrived at will be required as additional compensation under section 23(1) of the Land Acquisition Act and 15 times Government Revenue and capitalized Value of Rent and also entitled the interest according to the provision of the Land Acquisition Act from the date of delivery of the possession of the land to the respondents i.e. 31.3.1960 till the actual date of payment.

20. That the petitioner states and submits that the petitioner company has not received a single rupees till today for acquisition of the lands mentioned in the aforesaid agreement dated 28.02.1960 contained in Annexure - 1 though the delivery of the possession of the said lands to the respondents were given on 31.03.1960.”

(vii). The prayer clause of the writ petition is also reproduced below:

“ It is, therefore, prayed that Your Lordships may be pleased to admit this application and issue Rule Nisi to the respondents to show cause as to why the respondents be not directed to make payment of the compensation amount with the interest up to date and with the cost of litigation which the petitioner is entitled, immediately to the petitioner and after hearing both the parties after perusing the show cause if any shown, make the rule absolute and pass such further order or orders as Your Lordships may deem fit and proper.”

(viii). The respondent filed another writ petition, which came to be registered as W.P. No. 6793 of 2006 and prayed that a mandamus be issued to the appellants to start the acquisition proceedings afresh in respect of 201.41 acres

land of Village Darisai and 133.24 acres land of Village Gurajore by asserting that the acquisition proceedings initiated in 1960 had not been finalised.

(ix). W.P. No. 6793 of 2006 was dismissed by the learned Single Judge on 16.1.2008 by recording the following observations:

“Heard the parties and perused the records. The petitioner's main grievance is regarding non-payment of the price as mentioned in the indenture dated 28.02.1960. The petitioner has approached this court after more than four decades. The claim of the petitioner is stale and the same cannot be entertained in writ jurisdiction of this Court.

This writ petition is, accordingly, dismissed.”

(x). The respondent filed Civil Review No. 23 of 2008 for reconsideration of order dated 16.1.2008 but did not pursue the same till the disposal of the first writ petition.

(xi). The first writ petition, i.e., W.P. No. 1546 of 2005 was disposed of by another learned Single Judge on 18.11.2009 and a direction was given to the Collector of District Singhbhum (East) to issue fresh notices under Sections 4 and 6 of the 1894 Act and pass an award for grant of compensation after assessing the value of the acquired land. The relevant portions of order dated 18.11.2009 are extracted below:

“8. From the pleadings in the writ application and also from the various documents annexed thereto, it appears that the

petitioner's main contention is that though, his land was sought to be acquired by initiation of the land acquisition proceeding way back in the year 1960 and the amount of compensation was also contemplated and agreed for payment, but till date, no award was passed by the Land Acquisition Officer, nor any amount of compensation paid.

9. Such proceeding, in the light of the provisions of section 11A of the Land Acquisition Act, is deemed to have lapsed. The Land Acquisition Officer shall have to pass an award by initiating a fresh proceeding under Land Acquisition Act.

10. Considering the above facts and circumstances, this case is remitted back to the Land Acquisition Officer namely, the Collector of the District of Singhbhum East, to issue fresh notices as required under sections 4 and 6 of the Land Acquisition Act and to pass an award for the grant of compensation in accordance with law, after assessing the value of the land acquired. This exercise must be initiated and concluded by the Collector within a period of four months from the date of receipt/production of a copy of this order.”

(xii). After disposal of the first writ petition, the respondent revived its interest in prosecuting Civil Review No. 23 of 2008 filed in W.P. No. 6793 of 2006. The learned Single Judge took cognizance of order dated 18.11.2009 passed in W.P. No. 1546 of 2005 and proceeded to decide the review petition in the following terms:

“6. Considering the said submissions and the facts and circumstances, appearing on record, I find that the petitioner is entitled to the same relief as has been given to him in the similar situation in W.P.(C) No. 1546 of 2005 which was

denied to him in absence of the relevant facts on record in W.P. (C) No. 6793 of 2006.

7. In view of the above, the order dated 16.1.2008, passed in W.P.(C) No. 6793 of 2006 is recalled and the writ petition is disposed of directing the respondents to act in accordance with the directions, passed by this Court in W.P.(C) No. 1546 of 2005 also in respect of the land described in W.P.(C) No. 6793 of 2006. The District Land Acquisition Officer/Collector of the district of Singhbhum East is accordingly, directed to take immediate steps for assessing proper compensation of the aforesaid land in accordance with law within a period of three months from the date of receipt/production of a copy of this order.”

(xiii). Letters Patent Appeal No. 567 of 2009 filed by the appellants against the order passed in W.P. No. 1546 of 2005 was dismissed by the Division Bench of the High Court by recording a rather brief order. The Division Bench did not advert to the issues raised in the Letters Patent Appeal including the one that the learned Single Judge was not justified in directing the appellants to issue notifications under Sections 4 and 6 of the 1894 Act because the only grievance made by the respondent was in respect of non-payment of compensation and the provisions of Section 11A of the 1894 Act, which was inserted by the 1984 amendment, has no application in such matters, but negated the appellants’ challenge to order dated 18.11.2009 by observing that the title of land passes only when the acquisition takes place in accordance with law and the learned

Single Judge did not commit any error by directing the appellants to issue fresh notices under Sections 4 and 6 of the 1894 Act.

3. Shri Amrendra Sharan, learned senior counsel appearing for the appellants argued that the impugned order is liable to be set aside because the Division Bench altogether ignored that the direction given by the learned Single Judge for issue of notifications under Sections 4 and 6 of the 1894 Act and passing of an award was clearly beyond the scope of the writ petition filed by the respondent. Shri Sharan emphasised that if the respondent was to file a writ petition in 2005 for issue of a direction to the appellants to initiate the acquisition proceedings in respect of the land of which possession was handed over in 1960, the High Court was bound to dismiss the same only on the ground of unexplained delay of more than four decades and the learned Single Judge committed grave error by issuing a mandamus for which the respondent had not even made a prayer. Learned senior counsel argued that after having accepted the amount of compensation the respondent did not have the locus to press the writ petitions filed by it. He also pointed out that during the pendency of the writ petition filed by it, the respondent had received Rs. 1,48,683/- in LA Case No. 6/61-62 and Rs. 1,57,754/- in LA Case No. 5/63-64.

4. Shri Mahabir Singh, learned senior counsel appearing for the respondent supported the orders passed by the learned Single Judge and the Division Bench of the High Court and argued that in the absence of any provision in the 1894 Act, the State Government could not acquire title of the land belonging to the respondent simply by executing an agreement. Learned senior counsel submitted that the appellants were very much conscious of the fact that possession of the land had been taken without acquiring the same in accordance with the provisions of the 1894 Act and that is the reason why they issued notification dated 9.12.1960 under Section 4 and declaration dated 4.4.1961 under Section 6. He further submitted that the respondent was compelled to file the writ petition because no award was passed in furtherance of the acquisition proceedings initiated in 1960. Still further, the learned senior counsel submitted that the respondent had accepted the price of the land by reserving its rights to challenge the action of the appellants and the High Court did not commit any error by directing the appellants to acquire the land by following the procedure prescribed under the 1894 Act and pay compensation in terms of the award to be passed by the Land Acquisition Officer keeping in view the prevailing market value.

5. We have considered the respective submissions. In our view, the order passed by the learned Single Judge was ex-facie erroneous and the Division

Bench of the High Court committed grave mistake by approving the same. The direction given by the learned Single Judge to the appellants to issue notifications under Sections 4 and 6 and pay compensation to the respondent in terms of the award to be passed by assessing the value of the acquired land was clearly beyond the scope of W.P. No. 1546 of 2005, a reading of which leaves no manner of doubt that the respondent had not made a grievance that agreement dated 28.2.1960 was ultra vires the provisions of the 1894 Act or that even though possession of a substantial portion of the land specified in the agreement had been handed over on 31.3.1960, the State Government was under a legal obligation to initiate the acquisition proceedings and pay compensation under the 1894 Act.

6. The case set up by the respondent was that even though LRDC had taken possession of the land in furtherance of the agreement, the concerned authority had not paid compensation despite repeated representations and that it was entitled to receive the amount with interest for the period of 45 years. Unfortunately, the learned Single Judge did not notice the pleadings of the writ petition and decided the matter by assuming that the respondent was aggrieved by the inaction of the competent authority to initiate the acquisition proceedings under the 1894 Act and pay compensation determined by the Land Acquisition Officer, who was bound to take into consideration the prevailing market value.

7. We have now no doubt that if the learned Single Judge had taken the trouble of going through the pleadings of the case, he would not have issued a mandamus for issue of notifications under Sections 4 and 6, passing of award and payment of compensation to the respondent and that too by overlooking the fact that the respondent had moved the High Court after 45 years of the execution of agreement dated 28.2.1960. The learned Single Judge, who passed order in Civil Review No. 23 of 2008 also committed the same error and passed order dated 24.11.2010 without even advertng to the grievance made by the respondent in the first writ petition.

8. The Division Bench of the High Court did not take cognizance of the grounds on which the appellants had questioned the order passed by the learned Single Judge in W.P. No. 1546 of 2005 and confirmed the order passed by him by erroneously assuming that it was a case of abject failure of the concerned authorities to acquire the land in accordance with the provisions of the 1894 Act.

9. Another grave error committed by the learned Single Judge and the Division Bench of the High Court is that the learned Judges completely overlooked the settled law that in exercise of power under Article 226 of the Constitution, the High Court does not entertain belated claims - State of M.P. v.

Bhailal Bhai, (1964) 6 SCR 261 : AIR 1964 SC 1006 and M/s Tilokchand Motichand v. H.B. Munshi (1969) 1 SCC 110.

10. In the result, the appeal is allowed. The impugned order as also order dated 18.11.2009 passed by the learned Single Judge in W.P. No. 1546 of 2005 are set aside and the writ petition filed by the respondent is dismissed. However, the parties are left to bear their own costs.

11. It is needless to say that we have not examined the correctness of the calculation made by the appellants of the amount payable to the respondent in terms of agreement dated 28.2.1960 and if the latter has any grievance in that regard, then this order shall not preclude it from availing appropriate legal remedy.

.....J.
[G.S. SINGHVI]

.....J.
[SUDHANSU JYOTI MUKHOPADHAYA]

New Delhi,
March 30, 2012.