

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.42 of 2015

IN

Civil Writ Jurisdiction Case No. 5768 of 2013

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1. The State of Bihar.
 2. The Commissioner, Land Reforms cum Secretary, Land Reforms Department, Government of Bihar, Patna.
 3. The Commissioner, Magadh Division, Gaya District Gaya.
 4. The District Magistrate, Gaya at District Gaya.
 5. The Sub Divisional Officer, Sadar, Gaya at District - Gaya.
 6. The Deputy Collector, Land Reforms (D.C.L.R.), Gaya Sadar at District - Gaya.
 7. The Circle Officer, Bodh Gaya at District - Gaya.

.... Appellant/s

Versus

1. Deomanti Devi Wife of Ramdeo Sao Resident of Village - Taridih, P.S. - Bodh Gaya, P.O. + Anchal - Bodh Gaya, District - Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mrs. Nivedita Nirviakar, G.A.

For the Respondent/s : Mr. Prakash Srivastava & Mr. Ajay
Kumar Jha, Advocates

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 10-08-2015

1. This appeal under Clause 10 of the Letters Patent of this Court has been preferred by the State of Bihar and its officials, being aggrieved by an order, dated 18.04.2013, passed in CWJC No. 5768 of 2013, whereby this Court disposed of the writ application filed on behalf of the respondent herein, with a direction to the

Collector, Gaya, to take all possible steps to ensure that she got land in lieu of her acquired land in terms of the Policy of the State Government and decision emanating from letter No. 80/Headquarters dated 31.03.2007 (Annexure-2 to the writ application). Respondent was the writ petitioner before learned Single Judge.

2. From the facts asserted by the respondent in the writ application, it appears that in the year 1993, certain private lands were acquired by the District Administration of Gaya for construction of 100 houses for persons belonging to Scheduled Castes and Scheduled Tribes by the Sri Lankan Government. As per the policy of the District Administration, the land holders, whose lands were being acquired for the said purpose, were to be compensated by settling double of the area of the land so acquired at some other place. According to the respondent, land, belonging to her, which she had purchased in the year 1973, through sale deed from one Kali Manjhi and Sita Bhiyan, appertaining to Keshra No. 387 of Katha No. 185 and Keshra No. 386 of Katha No.5 and measuring 13 decimal, situate in village Mastipur Anchal, under Bodhgaya District, was also acquired by the District Administration. The land was mutated in her favour by the competent authority and she had been paying rent to the State Government and receiving receipt accordingly. As the Appellants-State of Bihar failed to settle the land double the area of



her land, which was acquired, in terms of the policy of the District Administration of Gaya, she filed an application before them. A Miscellaneous proceeding was, accordingly, initiated by the Deputy Collector, Land Reforms, Sadar Gaya, giving rise to Miscellaneous Case No. 4 of 1996-1997. A report of the Anchal Amin is said to have been called for, who submitted his final report in favour of the respondent. The Circle Officer, Bodhgaya, is said to have made recommendation for settling the land, in favour of the respondent, on 19.11.1996. The Sub-Divisional Officer, Sadar Gaya, however, found certain discrepancies in the said proposal of the Circle Officer. The Circle Officer is said to have removed the defects as regards proposal of settlement of the land in favour of the respondent. The Sub-Divisional Officer made recommendation for settlement of the land in favour of the respondent as per her case.

3. The respondent filed the writ application, on 15.3.2013, which was taken up by the Court on 18.4.2013. The learned Single Judge disposed of the writ application on the basis of letter No.80/Headquarters, dated 31.3.2007, which was brought on record by way of Annexure-2 to the writ application. Learned Single Judge directed the Collector, Gaya, to take possible follow up steps in the light of the said letter, dated 31.3.2007.

4. The said letter, dated 31.3.2007, is a communication



made by the Collector, Gaya, to the Land Reforms Commissioner-Cum-Secretary, Land Reforms, Government of Bihar, in the light of certain information sought for by the respondent under Right to Information Act. On a bare reading of the said letter, it would appear that certain guidelines were sought for from the Department by the Collector, Gaya, as regards respondent's claim for settling the land in her favour. As has been indicated above, the writ application was disposed of within less than one and half months from the date of its institution without any counter affidavit having been filed on behalf of the State of Bihar.

5. The State is aggrieved by the direction of the learned Single Judge in the present appeal. Without disputing the policy of the State Government to settle twice the area of the land acquired for the purpose of construction of houses for persons belonging to Scheduled Castes and Scheduled Tribes by the Sri Lankan Government, it has been contended that a Committee was constituted to conduct an enquiry as to whether any land, belonging to the respondent, was acquired for the purpose of construction of the said houses. A plea has been taken that respondent had never transferred the said land in favour of the Government and though she claimed to be the owner of the disputed land through sale, dated 12.3.1973, there is no entry of her name in revisional survey Khatian published in the year 1981. A

plea has been taken that no land belonging to respondent has been acquired under the said Policy of the District Administration and, therefore, there was no question of settling any land in her favour.

6. Mrs. Nivedita Nrvikar, learned Government Advocate, appearing on behalf of the appellants, has drawn our attention to Annexure-2 of the memo of appeal to contend that the proposal to settle the land in favour of the respondent, in lieu of alleged execution of land belonging to her, was rejected in the year 2000 itself. Mrs. Nrvikar has further submitted that no direction ought to have been given by learned Single Judge exercising extraordinary jurisdiction under Article 226 of the Constitution of India on a belated claim raised by the respondent.

7. Learned counsel, appearing on behalf of the respondent, on the other hand, while defending the order passed by the learned Single Judge, has contended that there is no infirmity in the order inasmuch as there is no dispute about the fact that respondent is the owner of the land, which she had purchased through sale deed executed in her favour, in the year 1973, from Kali Manjhi and Sita Bhuiyan having area of .13 decimal of description as has been noted above. According to him, this is also an admitted fact that the land of the respondent was acquired by the State Respondents for the purpose of construction of houses for person belonging to Scheduled Castes and

Scheduled Tribes and, therefore, the respondents could not have resiled from their earlier stand of settling in her favour twice the area of the land so acquired..

8. In our view, these are question of facts involved, which cannot be said to be admitted. There is no admission by the parties that the land, of which the respondent claims to be the owner, in fact, belongs to her. This Court, in writ jurisdiction under Article 226 of the Constitution of India, cannot make a declaration that the respondent had right, title an/or interest over the land in question. The other dispute, which has been raised by the State of Bihar is that the District Administration did not acquire the respondent's land. In our opinion, dealing with such disputes would require examination of evidence as the facts are not admitted, which cannot be done in a writ proceeding.

9. The Supreme Court, in case of *Subhashra Das. Vs. State of Orissa* reported in (2012) 9 SCC 729, has held that the claims of the parties, under Article 226 of the Constitution of India, cannot be entertained on the basis of disputed facts. In a case, where a writ petitioner wishes to press his/her claim before a High Court under Article 226 of the Constitution of India, the claim, raised by such petitioner, must be determined on the basis of factual position acknowledged by the respondents, the Apex Court has held.

10. Further, we find that there is no plausible explanation on record about the delay on the part of the respondents in filing the writ application in the year 2013, when the cause of action had arisen nearly two decades back.

11. Mrs. Nirvikar, learned Government Advocate appearing on behalf of the respondents, is right in her submission that such belated claim ought not to have been entertained by learned Single Judge in a proceeding under Article 226 of the Constitution of India.

12. We are, therefore, of the opinion that the order of the learned Single Judge, dated 18.04.2013, passed in CWJC No. 5768 of 2013 is, not free from infirmity and needs to be interfered with. The said order is accordingly set aside. CWJC No. 5768 of 2013 stands dismissed as the same involves disputed questions of fact and the question of title of the respondent.

13. This appeal is allowed.

14. The respondent shall, however, be at liberty to approach competent Court of Civil jurisdiction for the resolution of the dispute in accordance with law.

(I. A. Ansari, ACJ)

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(Chakradhari Sharan Singh, J)