

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.530 of 2015

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1. Jayram Malakar son of Late Paras Mali
 2. Bindeshwar Malakar son of Late Paras Mali
 3. Kanchan Devi wife of Birendra Malakar
 4. Shivram Malakar son of Late Paras Mali All are resident of village - Jaru Tola Ibrahimpur, P.O. Banwaria, P.S. Hulasganj, District - Jahanabad

.... Petitioner/s

Versus

1. The State of Bihar
2. The Special Land Acquisition officer, Patna Flood Security Planning, Anishabad, District - Patna
3. The Circle officer, Makhdumpur, at P.O. Makhdumpur, District - Jahanabad
4. The Land Reforms Deputy Collector, Jahanabad, District - Jahanabad
5. Ram Briksh Mali son of Late Jhopdi Mali All are resident of village - Jaru Tola Ibrahimpur, P.O. Banwaria, P.S. Hulasganj, District - Jahanabad

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Prabhakar Nath Rai, Advocate

For the Respondent/s : Mr. Ashok Kumar Keshari, Advocate, AAG-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-07-2015

Heard Mr. M.N. Parbat, learned senior counsel appearing for the petitioners, Mr. A.K. Keshari, learned AAG-11 for the State and Mr. Vijay kumar, learned counsel appearing on behalf of the private respondent no. 5.

The petitioners have prayed for issuance of a writ in the nature of certiorari for quashing the order of the respondent no. 2 the Special Land Acquisition Officer, Patna Flood Security Planning, Anishabad, Patna as contained in Letter No. 965 dated 1.12.2014 impugned at Annexure-15 to the writ petition whereby the petitioners have been directed to refund the amount of compensation paid to them



in respect of acquisition of Plot No. 319 and 320 in village Makhdumpur in the district of Jehanabad *inter alia* on grounds that the same had been received by these petitioners by practicing fraud. Apart from the fact that once the amount of compensation has been paid to the land owners, the District Land Acquisition Officer becomes functus officio to initiate such proceedings, even otherwise considering the facts accompanied in the present application where a dispute has been raised by the private respondents claiming to be a lineal descendant from the common ancestor of the petitioners, this is not an arena reserved for the District Land Acquisition Officer.

Facts of the case briefly stated is that whereas these petitioners claim to be lineal descendant from the daughter of one Bula Mali, the private respondents claim to be the agnates of Bula Mali. The said Bula Mali is stated to have survived by two daughters one of whom died unmarried while the other Malida Devi got married to one Budhan Mali and a son was born by the name of Paras Mali. These petitioners claim to be the sons of Paras Mali. Land acquisition proceedings was initiated for acquisition of land including the plot of the petitioner giving rise to Land Acquisition Case No. 60 of 2007-08. Upon completion of the statutory procedures, an award was prepared under Section 12 of the Land Acquisition Act, 1894 on 6.2.2002 and even the compensation amount was paid to these petitioners on 03.8.2012. Although the land acquisition proceedings continued for a



period of four years and even though the private respondent claims to be an agnate of the maternal grand father of these petitioners yet he raised no objections during the entire acquisition proceedings including at the stage of preparation of award or payment of the compensation. It is two years thereafter that the private respondent raised an objection on the compensation paid to these petitioners and whereupon a notice was issued by the Special Land Acquisition Officer vide Memo. 965 dated 01.12.2015 directing the petitioners to refund the amount received by them by way of compensation to the tune of Rs. 5,34,816/-. It is further mentioned in the said order that in case they fail to deposit the amount within 10 days then the Special Land Acquisition Officer would take recourse to the remedy so available to him under the Public Demand Recovery Act. It is stated at the bar that following the order even a certificate case has been initiated.

In between these sequence of events the private respondent has also filed an application for mutation of his name in the revenue records giving rise to Case No. 3445 of 2012 and which has been decided in his favour by the Circle Officer in absence of any contest from the petitioners. It is further stated that the appeal of the petitioners have been dismissed and the matter is now pending at the revisional stage.

Mr. Ashok Kumar Keshari, learned Additional Advocate

General No. 11 with reference to the notice impugned at Annexure-15 dated 01.12.2014 has submitted that the petitioners are bound by their undertaking and once they had accepted before the Special Land Acquisition Officer to refund the amount, they cannot backtrack on the same.

I have heard learned counsel for the parties and I have perused the materials on record. The only issue which falls for consideration before this Court is whether after the land acquisition proceedings have brought to an end upon preparation of award on 06.2.2012 and upon payment of compensation to the petitioners on 03.8.2012 whether the District Land Acquisition Officer had any jurisdiction to re-open a close proceeding at the instance of the private respondent. In my opinion, there is no such jurisdiction vested in the District Land Acquisition Officer under the provisions of the Land Acquisition Act, 1894 to re-open a concluded acquisition proceeding. Even if the private respondent has succeeded before the Circle Officer in getting his name mutated in respect of plots in question, apart from the fact that the matter is yet in consideration before the revisional authority, a decision on a mutation is not a conclusive decision as to the title of the person concerned even if being of persuasive value. Thus a mere grant of mutation cannot be a reason or a foundation for the District Land Acquisition Officer to re-open the concluded proceeding and even otherwise if at all the private respondent would

succeed in establishing his title over the land in question, he shall have to take recourse to appropriate civil law remedy that may be available to him but certainly a concluded land acquisition proceeding could not have been reopened at his instance and the notice impugned dated 16.6.2014 and the subsequent notice issued by the District Land Acquisition Officer is patently illegal and clearly without jurisdiction.

For the reasons aforementioned the notices bearing Memo No. 444 dated 16.6.2014, Memo No. 674 dated 08.8.2014 and Memo No. 965 dated 01.12.2014 impugned at Annexures- 11, 13 and 15 respectively to the writ petition are set aside.

The writ petition is allowed.

Interlocutory application bearing I.A. No. 4094 of 2015 stands disposed of.

Parties would be at liberty to pursue the different proceedings that have been initiated pursuant to the impugned notices.

The record so produced by Mr. A.K. Keshari has been returned for its onward transmission.

(Jyoti Saran, J)

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