

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.917 of 2010
IN
Civil Writ Jurisdiction Case No. 9853 of 2008

- =====
1. The State Of Bihar
 2. Collector, Sitamarhi
 3. Addl. Collector, Sitamarhi
 4. Anchal Adhikari, Majorganj, Distt.- Sitamarhi
 5. Special Land Acquisition Officer, Gandak Project, Muzaffarpur

.... Appellant/s

Versus

1. Ram Bahadur Singh S/O Late Mahanand Singh R/O Vill.- Harpur Kula, P.S. Majorganj, Distt.- Sitamarhi
2. Umesh Singh S/O Hakim Singh R/O Vill.- Harpur Kula, P.S. Majorganj, Distt.- Sitamarhi
3. Ramesh Singh S/O Hakim Singh R/O Vill.- Harpur Kula, P.S. Majorganj, Distt.- Sitamarhi
4. Valmiki Prasad Singh S/O Late Deep Narain Singh R/O Vill.- Harpur Kula, P.S. Majorganj, Distt.- Sitamarhi

.... Respondent/s

with

=====

Letters Patent Appeal No. 876 of 2010

=====

1. The State Of Bihar
2. Collector Sitamarhi
3. Addl. Collector Sitamarhi
4. Anchal Adhikari Majorganuj, Distt-Sitamarhi
5. Special Land Acquisition Officer Gandak Project, Muzaffarpur

.... Appellant/s

Versus

1. Manoj Kumar S/O Sri Bindeshwari Rai R/O Vill Parsa, P.S.Mojorganj, Distt-Sitamarhi

.... Respondent/s

with

=====

Letters Patent Appeal No. 877 of 2010

=====

1. The State Of Bihar
2. Collector Sitamarhi
3. Addl. Collector Sitamarhi
4. Anchal Adhikari Majorganj, Distt-Sitamarhi
5. Special Land Acquisition Officer Gandak Project, Muzaffarpur

.... Appellant/s

Versus

1. Uma Kant Rai S/O Ganni Rai R/O Vill Parsa, P.S.Majorganj, Distt-Sitamarhi
2. Arjun Kumar Rai S/O Ganni Rai R/O Vill Parsa, P.S.Majorganj, Distt-Sitamarhi

.... Respondent/s

=====

Appearance :

(In LPA No. 917 of 2010)

For the Appellant/s : Mr.Hari Shankar Roy,A.C. to P.A.A.G

For the Respondent/s : None

(In LPA No. 876 of 2010)

For the Appellant/s : Mr.Hari Shankar Roy, A.C. to P.A.A.G.

For the Respondent/s : None

(In LPA No. 877 of 2010)

For the Appellant/s : Mr.Hari Shankar Roy,A.C. to P.A.A.G

For the Respondent/s : None

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 29-10-2015

These three intra-court appeals arise from the judgment and order dated 7-8-2009 passed by the learned Single Judge of this Court, whereby the learned Single Judge held that the Land Acquisition Proceedings being questioned, would be deemed to have lapsed in terms of Section 11-A of the Land Acquisition Act, as in force at that time.

2. The learned Single Judge noticed the facts, and noticed that, as per the case of the State itself, the notice of the award was issued to the writ petitioners after seventeen years of the alleged award being signed, was itself enough to vitiate the proceedings.

3. We have heard learned counsel for the State. None

appears for the contesting respondents, who were writ petitioners.

4. The facts are that a Land Acquisition Proceeding was initiated in the year 1980 i.e., prior to the 1982 amendment of the Land Acquisition Act. It was then dropped on 6-4-1988 on the ground that even after the Notification of intention to acquire the land in terms of Section 4 (1) of the Land Acquisition Act(hereinafter referred to as the 'Act') , the Government had not released any compensation money at all. Thereafter, a fresh proceeding, being Land Acquisition Case No. 8 of 1988-89 was initiated for acquiring about 12.54 acres of land allegedly for rehabilitation of the persons displaced by floods caused by river Bagmati. This proceeding was initiated on 14-7-1988. The publication of the Notification in terms of section 4(1) of the Act was made in the newspaper on 21-9-1988. Objections were filed under section 5A of the Act. Allegedly, the objections were rejected on 14-6-1989. The State avers that inspite of several opportunities granted, the objectors did not turn up to press their objections. The writ petitioners contended with reference to complete ordersheet that they were not noticed in that regard. The writ petitioners contended that objections were rejected without hearing them, and that was contrary to Section 5A(2) of the Act, which, in clear terms predicates that after giving an opportunity to the objector and after hearing the objector, the objection has to be decided. The objections having been



allegedly decided, on 3-7-1989 the declaration in terms of Section 6 of the Act was published, lastly in the District Gazette on 1-8-1989. The State then alleges that the award was made and signed on 3-9-1990, but as money had not yet been released by the Government to pay for the compensation, it was not communicated to any body. It was first communicated in terms of Section 12(2) of the Act to the awardees on 17-8-2007 i.e., nearly eighteen years, after the alleged making of the award.

5. The State thus pleads that the learned Single Judge was wrong in holding that in terms of Section 11A of the Act, the proceedings would thus lapse, and further submits that in respect of an award that was made in 1990 the writ petitions having been filed in the year 2008, ought not to have been entertained on grounds of delay and laches.

6. Having considered the matter, in our view, the writ petitions were correctly and rightly allowed. The first thing we would like to notice is that the writ petitioners were sought to be deprived of their land by Notification issued in the year 1989 of which compensation was for the first time offered only in the year 2007 i.e., after the delay of eighteen years. There is no plausible explanation for this delay.

7. We would like to point out that the Land Acquisition



Act is an Act to deprive persons of their right to property in exercise of power under eminent domain for public purpose. The statute gives right to persons to file objections under Section 5A of the Act. It is not an empty formality. The objections have to be dispassionately considered and decided. The parties have to be given due notice and parties have to be heard. Section 5A(2) of the Act predicates “give the objector an opportunity of being heard in person” and “after hearing all such objections”. In the present case with reference to the complete ordersheet the writ petitioners have shown that the parties were never noticed with regard to dates fixed for hearing of the objection petitions. Without prior notice to them the objection petitions were dismissed, merely stating that no one had come to press the objection petitions, and as such they were being dismissed. We would like to observe that there being objections, those objections were to be decided on its merits whether the parties appear or do not appear, as it is a valuable right of a party, and this is virtually the only time he has a right and opportunity to object to the acquisition. It cannot be brushed aside easily. We agree with the learned Single Judge that this would vitiate the proceeding if without adequate hearing the objections are rejected and thereby all subsequent proceedings would fall.

8. Then we may consider other aspect i.e., the award.



The State states that after Section 6 Notification was last published on 1-8-1989, the award was signed on 3-9-1990. If this is all that was the requirement of law, then the State may be correct that the award was made within two years of Section 6 Notification. We have to keep in mind that an award is not merely a paper document drawn up and signed by the Collector. It has to be communicated under Section 12(2) of the Act immediately upon the award being made, and unless it is communicated in terms of Section 12(2) of the Act, making of the award is not complete. Reference may be made to the judgment of the Apex Court in the case of Raja Harish Chandra Raj Singh Vs. Deputy Land Acquisition Officer, since reported in A.I.R. 1961 Supreme Court 1500. The making of the award is complete upon its communication in terms of Section 12(2) of the Act. Therefore, we have to see when the award was communicated. On the pleading of the State itself, it is clearly admitted that for various reasons the money for payment of compensation was not released by the State for more than a decade. It was received after more than a decade and a half and, therefore, upon its receipt, notices in terms of Section 12(2) of the Act were issued on 17-8-2007. In other words, the making of the award was communicated to the awardees for the first time on 17-8-2007. The Notification under section 6 of the Act was made on 1-8-1989. Thus making of the award is completed after eighteen years,

which would be clearly in violation of Section 11-A of the Act. In our view, the proceedings would thus stand lapsed. The learned Single Judge was correct in this regard.

9. The State then submitted that the challenge was belated. What was effectively being challenged was the award dated 3-9-1990 by way of writ petitions only in the year 2008. To us, the answer is simple and straightway. The award having been made was kept in closet to be opened and the parties were informed only on 17-8-2007. The moment the parties were informed, the writ petitions were filed. Thus, there is absolutely no delay or laches. In any view of the matter, these contentions have been taken care of, and fully covered by the decision of the Apex Court in the case of Anil Kumar Gupta Vs. State of Bihar [(2012)12 Supreme Court Cases 443].

10. For the reasons aforesaid, we find no merit in these appeals. They are, accordingly, dismissed.

(Navaniti Prasad Singh, J)

B.K.Roy/-

(Nilu Agrawal, J)

U			
---	--	--	--