

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7439 of 2013

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Ravindra Singh S/O Late Geeta Prasad Singh R/O Village- Marsaiti, P.O.Andp.S.-
Teghra, District- Begusarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Deptt. Of Land Revenue, Govt. Of Bihar, Patna
3. The Principal Secretary Disaster Management, Govt. Of Bihar, Patna
4. The Divisional Commissioner, Munger
5. The District Magistrate, Khagaria
6. District Land Acquisition Officer, Khagaria
7. The Sub Divisional Magistrate, Khagaria
8. The Circle Officer, Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Singh No.1,
Mr. Bharat Bhushan, Advocates.
For the State : Mr. Ashok Kumar Keshri, AAG XI,
Mr. Shilp Keshri, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

CAV JUDGMENT

Date: 09 .01.2015

Heard learned counsel for the petitioner and learned counsel
for the State.

2. In the present writ petition petitioner is challenging letter
no.1715/Rev dated 7.8.2012 (Annexure-15) issued by the
Divisional Commissioner, Munger by which he has reviewed his
own enquiry report and thereby he has opined that the land which
has been acquired is not a residential land rather it is a Bhith land
and the compensation amount which has been proposed by the
Collector is extremely high that cannot be given, so much so when

the estimate was prepared for Rs. 32,66,634.00 and subsequently that has been changed and substituted with Rs. 2,86, 19,872.00.

3. The fact of the present case is that petitioner is the owner of the land appertaining to Thana No.266, Plot Nos. 221, 222, 369, Khata No.285 and 47, area 5.9 acres. Due to erosion of land by river Ganges, some of the victims were allowed to settle over the land as aforesaid with the permission of the State authority. In that way the petitioner was forcefully dispossessed from the land and State took the land of the petitioner for settling the same to incapable persons who have suffered due to washing away of their residence.

4. When they did not vacate and the State has not taken any steps for their removal from the land aforesaid, the petitioner filed title suit vide T.S. No.31 of 1987 for eviction from his land before Sub-Judge, Khagaria who passed the order in favour of the petitioner vide judgment and decree dated 6.5.1994 and directed for eviction of persons (encroachers) who were occupying the land of petitioner and the State was also directed to hand over the possession of the land. After the judgment and decree passed in the aforesaid title suit the Government has decided to acquire the said land for the ill- fated persons who were allowed to settle on the aforesaid land.



5. A land acquisition proceeding vide Acquisition Case No.5 of 1999-2000 was initiated and the Government issued the notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') on 1.9.2000. The petitioner filed objection on 18.12.2000 where the petitioner claimed that the land which is under process of acquisition is homestead land and which is adjacent to national highway. A notification under Section 6 of the Act was issued on 31.11.2001 and ultimately the said land acquisition proceeding lapsed on 21.9.2003.

6. The Government in the year 2005 initiated fresh second time acquisition proceeding vide Land Acquisition Case No.01 of 20008-2009 under the Act. The District Magistrate, Munger granted administrative approval vide Memo No. 212 dated 18.3.2008 for acquiring the said land. Accordingly notification under Section 4 of the Act was issued on 29.6.2009. Subsequently notice under Section 6 of the Act was issued on 6.7.2009. While issuing the notification under Section 4 of the Act the Government has taken decision to acquire the land under the emergency provision thereby dispensed with of raising objection under Section 5A of the Act.

7. In pursuance thereof a notice under Section 9 of the Act was issued on 17.3.2010 and as per counsel for the petitioner he



had raised oral objection with regard to nature of land as also its rate. It has further been stated that those who had been settled with the land in question, had obtained amount under Indira Awas Yojna for construction of their houses. It also appears that on 4.6.2010 80% amount of compensation was received without raising any objection which is apparent from Annexure-B to the counter affidavit filed by respondent no.3 from where it appears that both brothers had received the amount without raising any objection and it has further been mentioned that they will not raise any grievance in future for compensation amount.

8. It appears that the Collector of Khagaria district opened the fresh file, constituted a three men committee comprising of Additional Collector, Chairman, Senior Deputy Collector-cum-District Land Acquisition Officer one of the member, Senior Deputy Collector-cum-confidential in-charge member, submitted a report about the nature of the land, acquired for the beneficiary who have been settled with the land in question, found that PCC road has been constructed which connects the acquired land to NH 31. Those affected by erosion by the river Ganga were residing at plot no.369 for last 10 years some of them constructed thatched houses and some constructed pucca house.

9. In pursuance thereof the Collector has submitted an



estimate of cost of acquisition for Rs.2, 37, 52, 485.00 (Annexure 8 to the writ petition) and sought an administrative approval as well as allotment of funds whereupon Joint Secretary vide letter no.3740 dated 3.11.2011 (Annexure-9) addressed the letter to Divisional Commissioner sought his opinion of financial irregularity in acquisition of land. The Collector, Khagaria wrote two letters vide his letter no.329 dated 9.7.2011 (Annexure-11 to the reply of the counter affidavit on behalf of respondent no.3) letter no.419 dated 16.8.2011 (Annexure-12 to the reply of counter affidavit of respondent no.3) and letter no.475 dated 12.9.2011 (Annexure-13 reply to the counter affidavit) where in all the three letters it has been informed that 80% amount of Rs. 21,68,340.00 have already been paid to the petitioner and his brother and sought release of rest Rs.2, 86, 19, 872.00 for payment to petitioner and his brother. The Collector, Khagaria vide letter no.385 dated 29.7.2011 (Annexure-14 reply to the counter affidavit) addressed to Director, Land Acquisition whereby and whereunder request was made to see from his end for granting the administrative approval as well as also for allocation of fund so that acquisition proceeding could be saved from lapse. It appears that the matter was placed to the Joint Secretary who found estimated amount for acquisition of land for Rs.32,66,634 has



been increased suddenly to Rs.2, 86, 19,872/- which was considered to be an estimate in a very higher side for payment of compensation amount. The Joint Director, Disaster Management wrote a letter no.3740 dated 3.11.2011 (Annexure-9) to Divisional Commissioner, bringing to his notice of sudden rise of estimated amount of compensation of land, and requested to enquire into the matter and take proper steps to prevent draining out of the Government money. In the said letter it has been mentioned that when the estimate was for Rs.32,66,634/- was made how a parallel file was opened by the Collector, Khagaria though 80% of compensation amount has been paid rest 20% has already been allocated which is lying unpaid. It appears that again the Collector, Khagaria vide his letter no.12/50 dated 12.1.2012 requested the Divisional Commissioner, Munger for granting approval for the estimated amount of Rs. 2,86,19,872/- It also appears from the reply of the Collector, Khagaria that he clarified the objection raised by the Joint Secretary in his letter no.3740 dated 4.11.2011 by submitting eleven points for removing the misgiving of compensation amount where he has mentioned that the land in question was recorded as Bhith land where already 136 families have settled and constructed their houses. At the first instance petitioner had raised objections with regard to the nature of the land claiming of



residential nature, during the hearing of objection under Section 9 of the Act oral objection was raised by the land holder claiming the land has/had been converted for residential purposes. So much so he has mentioned the report of three men committee which found the nature of the land as residential and possession of land was taken on 21.7.2011 which was informed vide letter no.385 dated 29.7.2011, further mentioned that from all angles the estimated cost of land comes for Rs. 2, 86,19,872.00, cannot be said to be financial irregularities.

10. It appears that the Divisional Commissioner himself has constituted a three men committee comprising his Secretary, Joint Commissioner-cum- Secretary, Regional Transport Authority, Munger, Regional Planning Officer, Munger Division, were asked to give their report on the point, as the Collector gave two conflicting report, one in the year 2008 and another in 2011 with respect to same land, second what steps should be taken to prevent illegal leakage of flow of money. The three men committee gave their report on 15.5.2012 (Annexure-13) and they did not find any new material save and except which has been mentioned in the report of the Collector and thereafter the Divisional Commissioner vide letter no.1040 dated 22.5.2012 (Annexure-14) wrote a letter to the Joint Secretary where he has opined that eleven points

objections have been resolved by the District Magistrate, Khagaria vide letter no.12 dated 12.1.2012 and recommended for release of Rs. 2,86,19872/- (Annexure-14).

11. It appears that a semi Government letter no.1717 dated 1.6.2012 was issued which was replied, from it appears that there was a telephonic talk, instruction was given to submit report on categorization of land whererafter Divisional Commissioner, Munger has given the report vide letter no.1715 dated 7.8.2012 (Annexure-15) where he gave his finding, nature of land is "Bhit" land, the estimate prepared by the Collector for Rs. Two corers and odds as compensation for acquired land is in higher side is not sustainable and recommended rejection of proposal of Collector, Khagaria. From the said report it appears, an inspection was made to the spot, where it was found that certain houses were already standing but the view was deduced that those houses were constructed by the disadvantage person with whom it was settled was a Bhit land. He has further found that there was no justification to open a fresh and parallel file and to prepare the estimate of Rs. 2,86,19872/- is not sustainable and found that such estimate is completely illegal. In paragraph 7 of the letter it has stated that the land holder had already been paid 80% of amount, no objection was raised with regard to the nature of the land. It has



further been mentioned that in the Khatiyani the nature of land has been shown to be Bhitthi categorizing the same as residential is not sustainable. He has further opined that after the acquisition of the land converting the nature of the land cannot be basis for categorization of land. In his letter he has stated that those houses were standing on the land was not constructed by the land holder rather the houses were constructed by those who have been settled with the land.

12. Before considering the merit of case it is proper to consider the objection of res judicata raised by respondent for that it will be relevant to mention that the petitioner had filed a writ petition vide C.W.J.C. No.22964 of 2011 where the relief was sought “ for grant of appropriate writ/order/direction in the nature of writ of mandamus directing the respondents to pay the compensation amount of Rs.,2,86,19,872 with regard to the land involved in the present case.

13. In the aforesaid writ petition a counter affidavit was filed by the District Land Acquisition Officer, Khagaria where in paragraph 5 it has been mentioned that fresh acquisition proceeding was initiated after getting administrative sanction in the New Land Acquisition Policy, 2007. Accordingly proceeding under Sections 4, 6, 7, 9 and 17 was accomplished and possession



of acquired land was taken on 21.7.2011 prior to the estimate of Rs. 2,86,19,872/- was prepared and sent to the department of Disaster Management, Bihar with due recommendation from the Divisional Commissioner of Munger for administrative approval and allotment of the fund for final payment of the same. In paragraph 8 of the counter affidavit it has been stated that Land Acquisition Case No. 5 of 1999-2000 was initiated but same lapsed due to some technical reason. In paragraph 9 of the counter affidavit it has been stated that after hearing under Section 9 of the Act the final estimate of compensation was sought to be prepared on the basis of the present classification of land which is mandatory under the Act. To ascertain the nature of land a committee was constituted by the then Collector, Khagaria under the Chairmanship of Additional District Magistrate and two members of Senior Deputy Collector rank, the Committee found the land under the acquisition as residential and recommended the compensation to be paid accordingly. In paragraph 10 it has been mentioned that an estimate of Rs.2, 86,19,872/- was calculated in the prescribed form sent for administrative approval and allotment, so that final compensation would be paid to the land owner, till then possession of land was not taken over. In paragraph 13 it has been mentioned that due to non-availability of the fund, as per

estimate, final compensation has not been paid to the petitioner.

14. This Court considered the case of the petitioner and disposed of the writ application vide order dated 29.3.2012 (Annexure-1) with the direction that payment of compensation amount shall be made within a period of four months from the date of receipt of the certified copy of the order. It also appears that when the petitioner was not paid amount as desired by the writ petitioner, namely, Ravindra Singh, filed contempt application vide M.J.C. No. 4596 of 2012. This Court has refused to initiate a contempt proceeding and granted liberty to the petitioner to accept the amount tendered without prejudice to his right to file appropriate proceeding before the authority/forum in accordance with law.

15. It appears that the petitioner was paid 80% compensation amount on 4.6.2010 and rest 20% was offered to the petitioner but he did not accept the same.

16. Learned counsel for the petitioner submits that by the impugned letter the Commissioner has given go bye to earlier stand that the land is fit for residential purposes to land is Bhith, is not sustainable in law, on the fact that there was a report of the Collector where it has been shown the nature of the land has turned to be residential which was approved by the Commissioner



himself, so much so, the three men committee which was constituted, also found the land to be residential. He has further submitted that no award has been prepared in terms of section 11 read with section 12 of the Act and in that view of the matter he has no other alternative remedy but to approach this Court whereby he can challenge the manner the stand has been changed making the land from residential purposes to Bhith land whereby the compensation amount has illegally been prepared. So much so no final award has been prepared even treating the land as Bhith land. He has further submitted that in terms of section 11 of the Act which provides before preparation of the award, the Collector would be required to take approval from the appropriate Government which has not been done in the present case. As no final award has been prepared, petitioner is entitled for the compensation of land in terms of New Act.

17. Learned counsel for the State has raised the point that writ petition is not maintainable on the ground that earlier the petitioner has moved before this Court vide C.W.J.C. No. 22964 of 2011 which was disposed of on 29.3.2012 and so much so he has moved in a contempt proceeding vide M.J.C. No.4596 of 2012 there also the Court has refused to initiate the proceeding against the respondent. On that strength the State has taken plea of application



of res-judicata and constructive res-judicata as provided under Section 11 of the Code of Civil Procedure, now he cannot challenge the letter of the Commissioner (Annexure-15) in the present proceeding as in the earlier proceeding he has made a prayer for giving a direction for payment of award amount accordingly this Court passed the order now he cannot claim that no award has been prepared by the state of Bihar. In support of his contention he has relied on A.I.R. 1961 SC 1633 (Commissioner of Income-tax, Bombay v. Scindia Steam Navigation Co. Ltd.), paragraph 29, A.I.R. 1977 SC 1112 (Mysore State Road Transport Corporation V. Babajan Conductor and another), paragraph 12 , A.I.R. 1986 SC 391(Forward Construction Co. and others V.Prabhat Mandal (Regd.), Andhri and others). He has further submitted that in terms of section 11 of the Act for preparation of award, three ingredients should be there in the award, first area of the land, second nature of land and third apportionment. The award which has been prepared contains all three ingredients which satisfy conditions of Section 11 of the Land Acquisition Act for being treated as an award. He has further submitted that when 80% award amount has been paid there was no justification for the Collector to create a parallel file, wrongly showing Bhits land as the land for residential purposes, proposal for the



compensation amount of Rs.2,86,19,872 is malicious and smakes of ulterior motive of the Collector when 80% award amount has been paid and the nature of land was already decided as Bhith land. When the matter came to the State level it was found foul, Divisional commissioner was directed to make inspection of the spot and submit the report in turn the Commissioner in compliance of the direction, inspection was conducted at the spot where it was found that some houses were/are standing are of the beneficiaries, not of the land holder. In the Khatiyani the land has been shown to be a Bhit land, rightly arrived to a conclusion that the houses which were/are standing has been constructed by the beneficiaries not by the land holder and rightly approved Rs.32,66,634/- appropriate compensation amount and revised estimate by the Collector is not sustainable in law. He has further submitted that the petitioner has received 80% amount without any objection which is apparent from Annexures H of supplementary counter affidavit and rest 20% award has been prepared but he refused to receive the same and also addressed a letter no.116 dated 29.7.2009 (Annexure-B) to the Land Acquisition Officer where he has mentioned that he has accepted the money without any objection, rather voluntarily gave an undertaking, both brothers would have no objection, either in present or future. He has further



submits that after notification under Sections 4, 6, 9 and 17 of the Act whatever the land has been shown and when it was not challenged by the petitioner there cannot be any change of nature of land and there cannot be challenge after preparation of award. He has further submitted that award has been finally prepared and which is conclusively based on evidence. He has further submitted that award was challenged and if he has grievance he can raise objection under Section 18 of the Act.

18. In the present case respondents have raised the issue of maintainability of the writ petition on the ground that the present writ petition falls under the mischief of res-judicata and constructive res-judicata as provided under Section 11 of the Civil Procedure Code. The issue which was not raised in earlier proceeding nor the letter of the Commissioner (Annexure-15) was challenged in earlier proceeding now in the present proceeding, he cannot challenge on premise that no award was prepared by the State of Bihar.

19. Before entering into the merit, this Court feels that the issue of maintainability of the writ petition be decided as preliminary issue. For deciding the issue of res-judicata it will be necessary to exposit some facts.

20. Primarily the petitioner has raised that he has filed earlier



writ petition vide C.W.J.C. No.22964 of 2011 where he has made a prayer for grant the appropriate writ, order, direction in the nature of mandamus directing the respondents to pay compensation amount of Rs.2,86, 19870/- with regard to his land which was under acquisition. This Court vide order dated 29.3.2012 (Annexure-1) has passed the following orders:

“ Upon hearing learned counsel for the parties, writ petition is disposed of with the direction that payment of the compensation amount shall be made within a period of four months from the date of receipt of a certified copy of this order.

This writ petition is disposed of”.

21. As per claim of the petitioner when the order was not implemented he has filed contempt application vide M.J.C. No. 4596 of 2012 where the Court has recorded the submission of the petitioner and submission of the State about changing the nature of land from Bhit land to residential nature of land. It has further been mentioned that 80% tentative compensation amount was calculated and paid to the petitioner which was received without any objection. The Court did not settle the lis and gave liberty to accept the amount as tendered under Section 12(2) of the Land Acquisition Act which shall not prejudice the right to pursue his grievance in the appropriate proceeding in accordance with law. It will be appropriate to quote relevant portion of order:

“This Court also grants liberty to the petitioner

to accept the amount as tendered under notice issued under Section 12(2) of the Act (Annexure B to the supplementary show cause) which shall be without prejudice to his right to file appropriate proceeding before the authority/forum in accordance with law.

The present proceeding is dropped. The contemnors are discharge from the liability of contempt.”

22. It appears from the order that has been passed in the writ petition as well as in the contempt proceeding that this Court has not decided the right of the parties rather the writ court while disposing of the writ petition merely directed for payment of compensation. In subsequent proceeding liberty was given to the petitioner to get adjudication of his grievances before an appropriate forum or the Court. In that circumstances it has to be seen whether the principle of res-judicata or constructive res-judicata would be applicable to the present writ petition. It will be appropriate to quote provisions of Section 11 of the Civil Procedure Code:

“11. Res Judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigation under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation: Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”



23. Principle of res-judicata Section 11 of the Code postulates certain essential ingredients for its application prohibiting to raise same issue when that issue was directly and substantially been decided in earlier proceeding in between the same parties, in that circumstances prohibition to raise same issue would apply in subsequent proceeding/suit on the principle of re-judicata. Explanation 4 provides any matter which might or ought to have been made a ground for defence or attack in former suit shall be deemed to have been directly or substantially issue in such suit. The primary ingredient for application of res-judicata is that there should be the same set of parties to the former and subsequent suit. The issue in the earlier suit is directly or substantially in the subsequent suit and in the earlier suit the Court has heard and finally decided the lis.

24. Let us examine the judgments that have been relied upon by the respondents in support of his contention with regard to application of res-judicata and whether the principle that has been enunciated by the Hon'ble Supreme Court applies to the present case.

25. Case of Scindia Steam Navigation Co. Ltd.(supra) does not apply to the facts of the present case as in that case Hon'ble



Supreme Court was considering into the question as to the applicability of the proviso to Section 10(2)(vii) Income Tax Act and made discussion to the contour and parameter of Section 66(1) of the Income Tax Act. The Court has considered that when the question of law will be treated to be arising out of the order while considering the formulation of above sections of Income Tax Act. The judgment has been given in different context and situation which does not apply to the present case. The counsel for the State is trying to attract the proposition that has been decided, where the question law is said to have been raised before the Tribunal when question of law raised but Tribunal fails to decide the issue, it must be deemed to have been dealt with by it arising out of the order. Another issue has been dealt with when question was not raised before the Tribunal arising out of the order. Here the writ court did not pass order on merit merely, Court has directed to pay the compensation amount without discussing the issue involved in the writ. So there was no discussion and decision in the first round of litigation. So much so the petitioner was given liberty to raise the grievance before appropriate forum and authority.

26. In the case of Mysore State Road Transport Corporation (supra) in paragraph 12 Hon'ble Supreme Court has held that if the relief asked for against the Corporation had not been granted, that



relief would, therefore, be deemed to have been refused. So much so in a situation when the aggrieved person did not go in appeal against that judgment and he can not claim such relief in subsequent writ petition. In the present case, the petitioner had sought the relief for payment of compensation amount of Rs. 2,86,19,872/- and the Court has directed to make payment of compensation amount within a period of four months. When the order of writ Court was not complied with, a contempt petition was filed in which this Court gave liberty to accept the amount without prejudice to his right and also allowed the petitioner to pursue his remedy as available in law.

27. In view of the aforesaid discussions it is apparently clear, at no stage this Court has decided the case on merit. Principle of res-judicata and constructive res-judicata applies in a situation when the same party with regard to the same issue has litigated earlier and there the Court finally decided the issue, in that circumstances the res-judicata and constructive res-judicata would apply. While disposing of the contempt petition this Court has granted liberty to raise his grievance before appropriate authority as such the objection that has been raised that the present proceeding suffers from mischief of res-judicata is hereby rejected.

28. The next question in the present case whether the



petitioner is entitled to the relief of compensation amount of Rs. 2, 86,19,872/-. As record shows that the land of the petitioner was taken in occupation by settlees as their houses were submerged under river Ganges. The petitioner approached the State authority for redressal of his grievance, when he did not get response he filed title suit before Sub Judge which was decided in his favour. Then the State moved for acquisition of land which was initiated on 18.12.2000 but it could not be materialized ultimately acquisition proceeding lapsed on 20.9.2003/21.9.2003. After lapse of acquisition proceeding a fresh acquisition proceeding was initiated after administrative approval of the District Magistrate, vide order dated 18.3.2008 a notification under Sections 4 and 6 of the Act were published on 29.6.2009 and 6.7.2009 respectively. Ultimately notice under section 9 of the Act was issued on 17.3.2010 and he was paid 80% tentative amount of award as the land was acquired under the emergency provision.

29. The question would arise which date will be taken for considering the nature of land and computation of compensation amount. Will it be a date when the settlee illegally took possession of the land of the petitioner or will it be the date of notification issued under Section 4 of the Act on 1.9.2000 i.e. the first round of effort of acquiring the land which ultimately abated or it will be a



subsequent notification issued under Section 4 of the Act on 29.6.2009. This Court is of the view that during the period the settlee occupied the land of the petitioner illegally cannot be the basis for examining the nature/status of land nor the date when the Government initiated the acquisition proceeding for the first time by issuing notice under Section 4 of the Act as it died of its natural death. The nature/status of the land for computation of compensation will be the date when in the second time in 2009 the Government issued notification under Section 4 of the Act.

30. In that view of the matter, let us examine the factual aspect of the present case. As it appears that earlier the District Magistrate had sought Rs. 32,66,634/- for the purposes of acquisition of land which was allotted but subsequently the District Magistrate opening the new file placed demand of Rs.2, 86,19,872.00 which was referred by the Joint Secretary to Divisional Commissioner of Munger vide letter dated 4.11.2011 (Annexure-9) to make an enquiry and send his report. It appears that the Collector has placed the demand of the aforesaid amount and sought his approval vide letter dated 12.1.2012 (Annexure-11). In the said letter he has also attached the explanation with regard to resolving the objection raised by the Joint Secretary. There he has explained first acquisition proceeding lapsed and at



second attempt, the nature of land was already changed. There he also said that the land holder has raised objection about the nature of the land and claimed that the land in question has turned to be the residential and requested for enhancement of the rate of the land. He has mentioned that at the time of hearing at the stage of proceeding of Section 9 of the Act they have pointed out that the nature of land has already changed and it has become the residential in nature and he has given the details of fact rendered explanation for arriving to compensation ammount of Rs.,2,86,19,872/-. It also appears that the Divisional Commissioner, Munger vide letter dated 31.1.2012 constituted three man committee to submit its enquiry report and the Committee has approved the finding recorded by the Collector (Annexure 13 to the writ petition).

31. The Divisional Commissioner vide his letter dated 7.8.2012 has rejected the claim of the petitioner where he has recorded that 80% amount has been paid. In revenue record the nature of land is shown to be Bhit and as such the changing of nature of land as residential is completely illegal and after the notification under Sections 4, 6 and 17 the change of nature of land would not be a factor for deciding nature of land and requesting for allocation of additional fund is not justified. It



appears two factors came for consideration by the Commissioner. The Commissioner has treated the land as a Bhit land on the basis of the record of right and the Commissioner in his report has not given any indication which notification under Sections 4, 6 and 17 of the Act would be taken into consideration whether it will be the first notification under Sections 4 and 6 of the Act which lapsed later on or the subsequent proceeding when ultimately, the land was acquired. As this Court has decided that on account of lapse of first notification under Section 4 of the Act will not be the basis of computation of compensation amount but it will be the second time acquisition proceeding when finally the land was acquired in pursuance of notification issued under Sections 4, 6 and 9 of the Act. This Court feels that the Commissioner has misdirected himself in considering the case of the petitioner and he should have examined the matter afresh on the basis of materials which have been explained hereinabove.

32. In this view of the matter, the letter date 17.8.2012 is not sustainable and it would not survive and the same is quashed. The Commissioner should examine the matter afresh but before concluding the matter it is required for this Court to deal with two incidental issues raised by the parties. As the State has taken a plea that the petitioner has obtained the amount without any objection,



subsequently, he cannot turn round and claim for higher amount of compensation and another issue that has been raised by the petitioner that he can not be asked to approach the Collector of District as provided under Section 18 of the Land Acquisition Act on account of the fact that the State has not prepared award finally as provided under Section 11 and 12(2) of the Land Acquisition Act.

33. Let us examine the fact whether the award has been prepared finally or not.

34. As per counsel for the State award has been prepared finally, he has been paid 80% amount and was offered to 20% rest amount which he has refused to take it. He has submitted that in terms of Section 11 of the Act the award must consists three things; first area of land, second nature of land and third apportionment of land, all the ingredients are available in the award which has been prepared. For coming to the right conclusion it has to be seen as to whether 80% amount was paid to the petitioners after preparation of final award or 80% was paid on the basis of tentative amount of award in terms of Section 17 of the Act invoking emergency provision under the Act. As Section 17 of the Act provides that if the land is acquired under the emergency provision before taking possession 80% tentative



valuation of land would be paid to the land-holder whose land has been acquired. Invocation of emergency provision as per sub-section 3-A of Section 17 of the Act provides payment of 80% estimated amount to the land-holder. It will be appropriate to examine the contents of the award (Annexure-D) through which the petitioner has been paid 80% tentative amount of award. The award (Annexure-D) itself shows that 80% amount is based on estimated value of land. The document itself shows that this amount was paid in terms of Section 17 of the Act as it was bounden duty of the Collector to pay 80% award amount before taking in possession the land. This fact is substantiated from annexure A to the supplementary counter affidavit of respondent nos. 5 and 6 where this document shows authority has taken possession of the acquired land. Two contemporaneous documents show this 80% amount was paid on tentative valuation of land as per sub section 3-A of Section 17 of the Act. This fact is further substantiated from the letters no. 419 dated 16.8.2011 (Annexure-12 to the reply of the petitioner to the counter affidavit of respondent no.3)addressed by the Collector to the Principal Secretary, Disaster Management where the Collector has requested for allotment of the additional amount otherwise, the late payment will incur interest which will cause additional burden to the State



exchequer the same has been re-iterated in letter no.475 dated 12.9.2011, so much so, the counter affidavit which was filed in C.W.J.C.No.22964 of 2011 in paragraph 13 and 14 it has been specifically stated that “non-availability of fund as per the estimate detailed in paragraph 11 and 12 the final compensation has not been paid to the petitioner land owner till day.”

35. In view of categorical statement made by the Collector in his letters as well as the counter affidavit filed in the earlier writ petition without any iota of doubt shows that final award has not been prepared by the Collector. This fact is further corroborated, as 80% compensation amount does not include the items of interest and solatium as these are required in the final award which is missing in Annexure-D i.e. as per the claim of State, about final preparation of award is not sustainable in law as well as on fact.

36. In view of above discussion this Court is of the view that the State, till today, has not prepared the final award and Annexure D which has been brought by the State in its counter affidavit has prepared in terms of sub-section 3-A of Section 17 of the Act. On discussion of the aforesaid fact this Court comes to a conclusion that the so called 80% is not out of final award and as such the petitioner can not approach to the Collector with regard to enhancement of compensation amount as provided under Section



18 of the Land Acquisition act. Had there been a preparation of final award this Court would have directed the petitioner to approach the collector as provided under Section 18 of the Act but it is missing in the present writ petition. Accordingly the petitioner is right that he has no other way to raise his grievance but to file the present writ petition. The objection raised by the State is hereby rejected.

37. State has raised objection that the petitioner has taken money without any objection which debars the petitioner to raise objection subsequently for enhancement of compensation amount, for that this, Court will have to examine the material that has been brought by the state. In support of his contention the State has attached a letter addressed to Land Acquisition Authority by way of Annexure-B to the counter affidavit addressed to Land Acquisition Officer which shows petitioner Rabindra Singh had no objection with regard to the acquisition of their land. Another undertaking of similar nature was filed by the petitioner as per the State when he had not raised objection now he can not claim enhancement of the amount. The objection of the State is not sustainable as State has never prepared the final compensation amount but it paid a tentative amount. On reading of this affidavit it shows that they had given undertaking that they will not raise



any objection with regard to acquisition of land. Dispute is not the acquisition of land but payment of proper amount of compensation based on classification of land whether it is Bhit land or the residential land. It has to be kept in mind that the land has been acquired in second attempt under the emergency provision where petitioner could not raise objection on account of dispensing with raising of objection. This Court is not entering into the area as to whether the State has rightly invoked the emergency provision or it was wrongly exercised by the State but certainly it appears from the record that while hearing the matter under Section 9 of the Act before the Collector petitioner had raised objection in respect of categorization of land where specifically the Collector (Annexure-11) has recorded that the land owner has claimed that the land in question has turned for residential purpose and also requested to fix the valuation of land treating the same as residential land. In this view of the matter this Court feels that petitioner cannot be deprived of his right of fair compensation only on account of the fact that petitioner has not raised objection about the nature and rate of land at the time of receiving 80% of amount as it was not right occasion as it could have been raised at the time of preparation of final award and as such this Court is of the view that objection raised by the State that petitioner can not now raise

objection about enhancement of rate of land is not sustainable.

Accordingly this objection is rejected.

38. In view of the aforesaid discussions, the order dated 7.8.2012 issued by the Divisional Commissioner, Munger is set aside and he will undertake fresh enquiry and decide the nature of land on the date of notification issued under Section 4 of the Act in second round of acquisition proceeding.

39. With the aforesaid observation this writ petition is allowed.

Vinay/-

(Shivaji Pandey, J)

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