

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.739 of 2014
IN
Civil Writ Jurisdiction Case No. 1677 of 2013

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1. Akhourī Gopal, son of Late Akhourī Bansidhar Prasad, resident of Bansi Sadan, Chand Choura, Police Station- Civil Line, District- Gaya **Appellant**

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The District Magistrate, Gaya
3. Bihar State Housing Board through its Chairman, Bihar, Patna
..... **Respondents**

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Appearance :

For the Appellant : Mr. K. N. Singh, Senior Advocate
Mr. Manish Kumar No-2, Advocate
For the State : Mrs. BINITA SINGH, G. P. 31
Mr. Mukund Mohan Jha, AC to GP 31
For Respondent No. 3 : Mr. Anshuman Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE JUSTICE SMT. ANJANA MISHRA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)
Date: 18-03-2015

A notification was issued, on 11.11.1974, under Section 4(1) of the Land Acquisition Act, 1894, (hereinafter referred to as "L. A. Act"), by the State Government for acquiring an area of 6.85 acres of land for construction of housing colony. Land Acquisition Case No. 39 of 1975-76 accordingly came to be borne for the said land acquisition. Though Ram Nandi Devi, predecessor-in-interest of the present appellant, raised her objection against the said acquisition, the acquisition process was completed and as the said Ram Nandi Devi sought for enhancement of



compensation, a *reference* was made, which came to be registered as L. A. Case No. 238 of 1992/21 of 1986. This *reference* was disposed of on 27.01.1993. An award, dated 24.02.1993, accordingly followed. Against the award aforementioned, Ram Nandi Devi filed First Appeal No. 427 of 1993, which is pending before this Court, the ground of challenge to the award being unreasonably low quantum of compensation. Consequently, the said appeal does not put to challenge the legality of the acquisition.

2. Having acquired the land, Bihar State Housing Board (hereinafter referred to as "the Board") did not raise any residential accommodation and after about 36 years, the Board started making settlement of the land in favour of various government, semi-government and other institutions including private schools and malls. Thus, while, for example, a plot of land was settled in favour of Life Insurance Corporation of India; another plot of land was settled in favour of Delhi Public School. Newspapers also carried the news that Government had decided to construct a mall and other commercial premises on the land, in question, which had been acquired for the purpose of housing colony to be built by the Board.

3. Since the Government was not utilizing the land for the purpose for which the same had been acquired, the



appellant herein, who is the son of Ram Nandi Devi
aforementioned, filed a writ petition, under Article 226 of the
Constitution of India, which gave rise to CWJC No. 1677 of
2013. By his writ petition, the appellant herein sought for
quashing of the notification, dated 11.11.1974, issued under
Section 4 (1) of the L. A. Act. The State of Bihar as well as
the Board keenly contested the writ petition, their case being,
in brief, thus:

(i) Upon hearing the objection raised by the mother
of the writ petitioner to the acquisition of the land, in
question, the objection was disposed of and necessary
declaration, in terms of Section 6 of the L. A. Act, was made
by the Government with regard to the acquisition of the land.
Thus, the acquisition was made by adopting the ordinary
course of acquisition and not by resorting to Section 17 of the
L. A. Act, which is meant for acquisition whenever required to
be made in emergency. The writ petitioner had already been
paid compensation and the acquired land, having legally
come into the possession of the Board, the same stood
vested in the Board, which has, now, the right to use the land
for a public purpose. The acquisition was not bad inasmuch
as there is no material to show that the acquisition was *mala*
fide or suffered from fraud and, therefore, the mere fact that
the land, in question, is being, now, utilized for a purpose

other than the one, which it had been acquired for, the acquisition cannot become bad in law, more so, when the utilization of the acquisitioned land can also not be said to be for a purpose other than public purpose.

(ii) The process of acquisition was started as far back as in the year 1974 and, during the last 39 years, the writ petitioner or his predecessor-in-interest had not approached any court of law against the acquisition except challenging the quantum of compensation, which had been found payable to the predecessor-in-interest of the writ petitioner, and it is only after the Board started settling the land for the purpose of construction that the writ petitioner has raised objection and re-claimed the land.

(iii) It is not necessary that the land, which had been acquired for a given public purpose, must be utilized for that purpose alone and not for any other public purpose unless the acquisition itself was *mala fide* or fraudulent in nature or in colourable exercise of power. So long as the acquisition is not proved to be *mala fide* or suffering from any fraud or collusiveness, the acquisition cannot become bad in law, when the land owner has already received compensation and, seeking enhancement of the compensation, First Appeal No. 427 of 1993 has already been filed; hence, in these circumstances, the notification, dated 11.11.1974, issued,

under Section 4 (1) of L. A. Act, may not be quashed at this belated stage.

4. After hearing the parties concerned, a learned single Judge of this Court came to the conclusion that the acquisition proceeding was concluded in the year 1985 and the land, in question, stood vested in the State of Bihar and, later on, the land had been handed over to the Board. The learned single Judge also concluded that though the writ petitioner had obtained compensation for the acquisitioned land and, on the demand for higher compensation raised by the writ petitioner, a *reference* was made under Section 18 of L. A. Act, the fact remains that the property stands vested in the Government and, therefore, the writ petitioner cannot, now, re-claim the land.

5. With the conclusions so reached, the learned single Judge passed the order, dated 12.03.2014, dismissing the writ petition. Aggrieved by the dismissal of his writ petition, the writ petitioner has preferred this appeal.

6. We have heard Mr. K. N. Singh, learned Senior Counsel, appearing on behalf of the appellant, and Mrs. Binita Singh, learned Government Pleader No. 31, appearing on behalf of respondent Nos. 1 and 2. We have also heard Mr. Anshuman Singh, learned Counsel appearing on behalf of Bihar State Housing Board (respondent No. 3).



7. A bare perusal of the notification, dated 11.11.1974, aforementioned clearly shows that this notification was issued under Section 4 (1) of the L. A. Act and the said notification made it clear that the decision, as regards the acquisition of the land, would be taken only after the disposal of the objections under Section 5 (A) of L. A. Act. In course of time, acquisition proceeding was finalized by rendering of award by the District Collector and, on a higher compensation being claimed, a *reference* was made, which, too, was concluded and as against the order made in the *reference*, an appeal has been filed by the writ petitioner, which has given rise to First Appeal No. 427 of 1993.

8. In the circumstances indicated above, it cannot be said that the acquisition of the land, in question, was bad in law; more particularly, when no *mala fide* in the acquisition of the land is proved nor is it proved that the acquisition of land suffered from fraud or collusiveness or otherwise.

9. In fact, no illegality in the acquisition of the land has been brought to our notice. Merely, therefore, the fact that the land is, now, being allotted by the Board to various individuals for the purpose of raising construction, the learned single Judge has justifiably not interfered with the acquisition.

10. We may also hasten to point out that the case at



hand is not covered by Section 17 of L. A. Act inasmuch as Section 17 of L. A. Act comes into play only when land is sought to be acquired in a state of emergency. In fact, the acquisition has been made by following the provisions embodied in Section 16 of L. A. Act, which reads, "*When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances*".

11. From a bare reading of Section 16 of L. A. Act, it becomes clear that once the Collector has made an award under Section 11 of L. A. Act, as the same has been made in the present case, and the possession is taken over by the Collector, the land vests absolutely in the Government free from all encumbrances. The Government cannot, therefore, be divested of the land merely because it has decided to utilize the land for a purpose other than the one with which it had acquired the land; more so, when the latter purpose can also not described to be a purpose, which does not fall within the expression "*public purpose*".

12. It is an admitted position that the award was prepared in the year 1983 and the writ petitioner was already given compensation for the land, in question. As against the quantum of compensation, grievance was, undoubtedly, raised by the writ petitioner, but legality of the acquisition

was never questioned after the award was made by the Collector in terms of Section 11 of L. A. Act and, hence, the land, in question, stood validly vested in the State Government free from all encumbrances and it is only after so many years that the Board has started to settle the land, so acquired, for development and such a change in the course of utilization of the acquired land cannot make the original acquisition bad in law, when acquisition is not *mala fide* or fraudulent or, otherwise, collusive; more so, when even subsequent purpose of utilization is also for general development and not proved to be *mala fide* or designed, with ulterior motive, to help any individual.

13. Because of what have been discussed and pointed out above, we do not find any infirmity, legal or factual, in the dismissal of the writ petition by the learned single Judge. This appeal, therefore, fails.

14. This appeal shall accordingly stand dismissed.

(I. A. Ansari, J.)

Anjana Mishra, J.: I agree.

(Anjana Mishra, J.)

Prabhakar Anand/-

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