

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.305 of 2014

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1. Md. Mustafa Son of Late Abdul Subhan Khan Resident of Mohalla White House Compound, P.S. Rampur, Dist - Gaya
 2. Eqbal Ahmad Son of Shakoor Khan Resident of Mohalla White House Compound, P.S. Rampur, Dist - Gaya
 3. Mossami Khatoon Wife of Md. Nasir Khan Resident of Mohalla White House Compound, P.S. Rampur, Dist - Gaya
 4. Md. Rafique Alam Son of Late Badruddin Khan Resident of Mohalla White House Compound, P.S. Rampur, Dist - Gaya
 5. Bibi Tara Khatoon Wife of Shakoor Khan Resident of Mohalla White House Compound, P.S. Rampur, Dist - Gaya

.... Petitioner/s

Versus

1. The State of Bihar , through the Secretary-Cum-Commissioner, Revenue And Land Reforms Department, Old Secretariat, Patna
2. The Principal Secretary, Urban Development Government of Bihar, Patna
3. The Principal Secretary, Department Of Revenue, Government of Bihar, Patna
4. The Divisional Commissioner, Magadh Division, Gaya
5. The Collector, Gaya
6. The Additional Collector, Gaya
7. The District Land Acquisition Officer, Gaya
8. The Sub-Divisional Officer, Sadar, Gaya
9. The Circle Officer, Town Block, Gaya
10. The Mayor Municipal Corporation, Gaya
11. The Deputy Mayer, Municipal Corporation, Gaya
12. The Municipal Corporation, Gaya through Municipal Commissioner
13. The Commissioner, Municipal Corporation, Gaya
14. Shahwar Zareen D/O Late Mumtaz Kadri Resident of Mohalla - New Karimganj, P.S. - Civil Lines, Dist - Gaya
15. Rana Noor D/O Late Mumtaz Kadri Resident Of Karimganj, P.S. Civil Lines, Dist - Gaya At Present Residing At Vatika Green Valley 611, Paradih Road, Mango, Jamshedpur, Jharkhand
16. Gazala Naj Wife of Akhtar Quadri Resident of Mohalla - New Karimganj, P.S. - Civil Lines, Dist - Gaya
17. Nikhat Nigar Wife of Shamim Anwar Quadri Resident of Mohalla - New Karimganj, P.S. - Civil Lines, Dist - Gaya
18. Kanchan Devi Wife of Sanjoy Kumar Alias Laloo Resident of Mohalla - Goshai Bagh Kauwah Asthan, P.S. - Kotwali, Dist - Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Prasad Sinha, Adv.
For the Respondent-State : Mr. Krishna Chandra, A.C. to Advocate General
For the Gaya Municipality: Mr. Ravindra Priyadarshi, Adv.
For the Private respondent: Dr. Mayanand Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-07-2015

Heard Mr. Nand Kishore Prasad Sinha, learned counsel for the petitioners, Mr. Krishna Chandra, A.C. to Advocate General, Mr. Ravindra Kumar Priyadarshi, learned counsel for the Gaya Municipal Corporation and Dr. Mayanand Jha, learned counsel appearing for the private respondents.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioners have questioned the notification issued under Section 48 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') dated 12.11.2013 as contained in Annexure-14, the Gazette notification whereof has been placed at Annexures-B series of the counter affidavit filed by the State-respondents whereby the plot of land bearing Nos.4820 and 4821 admeasuring 2½ decimals situated in Mauza- Alamgirpur, Gewal Bigha, Sipahi Lane, White House Compound, Thana No. 8 in the district of Gaya, has been denotified. The petitioner is also aggrieved by the re-conveyance of land to the land owners following the notification issued under Section 48.

Mr. Sinha learned counsel for the petitioners questioning the notification denotifying the land in question has submitted that the land acquisition proceeding in question was initiated for the purpose of construction of road. The plot of land belonged to one Chand



Kumari wife of late R.K. Jain. It is submitted that following the decision to acquire the land in question that a notification under Section 4 of 'the Act' was issued on 1.6.1999 which was followed by a declaration under Section 6 of 'the Act' issued on 6.12.1999. In between the said notifications, the land owner Chand Kumari sold the land in question in favour of the respondent Nos. 14 to 17. An award was prepared on 12.11.2000 under Section 12(2) of 'the Act' quantifying the compensation amount of Rs. 1,20,461.35/-. It is submitted by learned counsel that though the award was attempted to be served on the private respondents but they refused. According to the petitioners the possession of the land in question was taken over by the Gaya Municipality for construction of the road on 25.4.2013 and being aggrieved by such action the respondent Nos. 14 to 17 moved this Court in C.W.J.C.No.4230 of 2000. The writ petition was dismissed holding that the land had vested in the State of Bihar and the Letters Patent Appeal bearing L.P.A.No.125 of 2010 was also dismissed on 20.8.2012. A review application was filed in the Letters Patent Appeal but was withdrawn. It is the contention of the petitioners that even when the land stood vested in the State under the acquisition proceedings, the respondent Nos.14 to 17 transferred the lands in question in favour of the respondent No.18. It is the case of the petitioners that a land encroachment proceedings was registered

against the transferees giving rise to land Encroachment Case No. 11 of 2012-15 and vide order passed on 8.6.2013 the Circle Officer directed for removal of encroachment. A copy of the order is placed at Annexure-13.

It is the complaint of the petitioners that despite the finality attached to the proceedings that a decision was taken by the Town Commissioner, Gaya Municipality for return of the land in question and a letter to that effect was written to the District Land Acquisition Officer on 16.1.2013 placed at Annexure-11 expressing his opinion for relinquishment from the land. It is stated that even when the Additional Collector vide letter dated 18.5.2013 placed at Annexure-12 protested against the steps towards relinquishment yet the impugned notifications have been issued along with the deed of re-conveyance.

The short argument of Mr. Sinha is that the acquisition proceedings stood completed; the land stood vested in the State, the construction of road had been initiated; the proceedings for removal of encroachment had begun and thus there was nothing pending in the acquisition proceedings except a formalization. It is submitted that there was no turning back for the respondents from the acquisition proceedings which stood completed. Learned counsel in support of his submission has relied upon Supreme Court judgment reported in **2013**

(1) BBCJ 96 SC (V. Chandrasekaran & Anr. Vs. The Administrative Officer & Ors.) more particularly paragraph 23 thereof.

The arguments of Mr. Sinha has been contested by the counsel appearing for the State, the Municipality as well as the private respondents and it has been universally argued by the counsel that the proceedings had not been taken to is logical conclusion inasmuch as the litigations were yet on and the matter was yet being deliberated at the stage of the municipality and the State.

It has been specifically argued by Mr. Priyadarshi for the Municipality that the proposal itself was motivated and did not have administrative sanction and thus the possession thereof was never taken over and since the proposed acquisition did not satisfy the public purpose that the municipality decided to relinquish its right thereon and to return land and in which direction a letter was issued to the District Magistrate -cum-Acquisition Officer on 3.12.2012 placed at Annexure-12 for return of the compensation amount. Supporting the argument of Mr. Priyadarshi it is submitted by Mr. Chandra appearing for the State that it is in consideration of the request of the municipality and since neither the possession over the land in question was taken over nor the amount of compensation paid to the landlords that the Government accepting the request has denotified the land

which suffers no infirmity.

Dr. Jha, learned counsel appearing for the private respondent argued that the entire exercise was motivated and upon detection thereof that the municipality decided to undo the procedural infirmity and the notification are only vindication thereof.

I have heard learned counsel for the petitioner and I have perused the materials on record.

Section 48 of the Land Acquisition Act empowers the State Government to withdraw from acquisition proceedings from any land where the possession has yet not been taken over. Although it has been vehemently argued by Mr. Sinha appearing for the petitioners that the possession of the land in question had been taken over by the municipality and even the construction of the road had been started and that land encroachment case had been initiated against the present landlord i.e. respondent No.18 and to some extent Mr. Sinha may be right but in consideration of the subsequent orders on record it is apparent that though the land had been acquired but neither the compensation amount had been paid to the landlords and even on the issue of possession there is a grey area. The counter affidavit of the Municipality as well as the private respondent would clarify all issues as regarding the compensation aspect as well as the possession aspect. There is no dispute on the fact that the compensation has not been



paid to the landlords and although Mr. Sinha attributed the same as an act of avoidance by the landlord but that would not alter the position in the matter for the fact remains that the compensation amount has not been paid to the landlords. As to the issue of possession, although admittedly a land encroachment proceedings had been initiated but upon clarification received in the matter, the Circle Officer vide order passed on 21.6.2013 in consideration of the report of the municipality, dropped the proceedings, a copy of which order is placed at Annexure-K to the supplementary counter affidavit filed by the private respondents. The order dropping the proceedings was supportive of the fact that the land had not yet been taken possession of by the official respondents and remained with the private respondents. The letter dated 3.11.2012 of the municipal officer is conclusive on the issue of possession and a copy of which is placed at Annexure-A to the counter affidavit of the said respondents in which the Town Commissioner very clearly mentions that the land in question continues to be in the possession of the raiyats. He also mentions that until the issuance of the letter the acquisition proceedings had not yet been completed nor any construction of road had taken place and thus the compensation amount may be returned to the municipality.

While the acquisition proceedings remained pending that the



Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force repealing the Land Acquisition Act, 1894 (herein after referred to as 'the Act of 2013'). Section 24(2) of 'the Act of 2013' relied upon by Dr. Jha clearly stipulates that where an award under an acquisition proceedings initiated under the Land Acquisition Act, 1894 has been made 5 years or more prior to the commencement of 'the Act of 2013' but the possession has not been taken or the compensation has not been paid, the said proceedings shall deem to have been lapsed.

Mr. Sinha while contesting the argument of Dr. Jha relied upon the provisions has submitted that in so far as the present case is concerned, though the compensation amount has been avoided to be taken by the land holders, the possession of the land has been taken but in my opinion the submissions made by Mr. Sinha on both aspects, are not correct. There is a categorical assertion of the Town Commissioner that the possession has not been taken and admittedly the compensation has not been paid.

The legal intendment of the statutory provisions underlying Section 24(2) of 'the Act of 2013' has been explained by the Supreme Court in the judgment rendered in the case of **Rajiv Chowdhrie Vs. Union of India & Ors. reported in 2015(2)PLJR 30 SC**, and it is in either of the circumstances i.e where a possession of the land has not

been taken over or the compensation amount has not been paid and an award had been made more than 5 years back, that the acquisition proceedings initiated under 'the Act' have been held to have lapsed. In view of the clear stipulation of Section 24(2) of 'the Act of 2013' the proceedings in question have lapsed and thus the notification denotifying the lands under Section 48 of 'the Act' is only a completion of formality by the State and which suffers from no infirmity requiring interference.

The writ petition is accordingly dismissed.

(Jyoti Saran, J.)

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