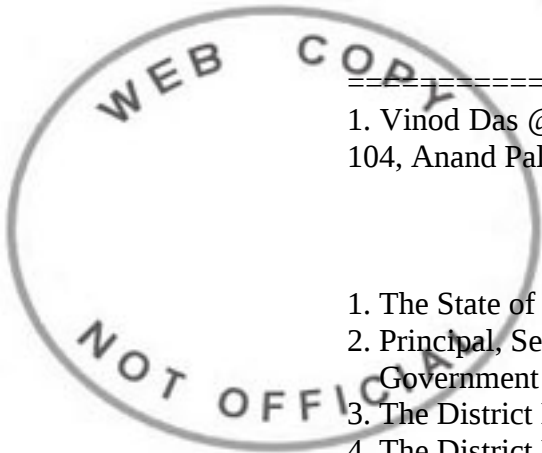




IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14711 of 2009

1. Vinod Das @ Vinod Mishra Son and Chela Of Late Mahant Raghunath Das R/O 104, Anand Palace, Patliputra Colony, P.O. & P.S.- Patliputra Colony, Distt.- Patna

.... Petitioner/s

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
- 2. Principal, Secretary, Department Of Revenue and Land Reforms, Government of Bihar, Patna
- 3. The District Magistrate, Patna
- 4. The District Land Acquisition Officer, Patna
- 5. The Deputy Collector Land Reforms, Sadar, Patna
- 6. The Bihar State Housing Board through Its Managing Director, 6, Mangles Road, Patna
- 7. The Managing Director, Bihar State Housing Board, 6, Mangles Road, Patna
- 8. The Estate Manager, Bihar State Housing Board, 6, Mangles Road, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 6465 of 2007

Binod Das @ Binod Mishra

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

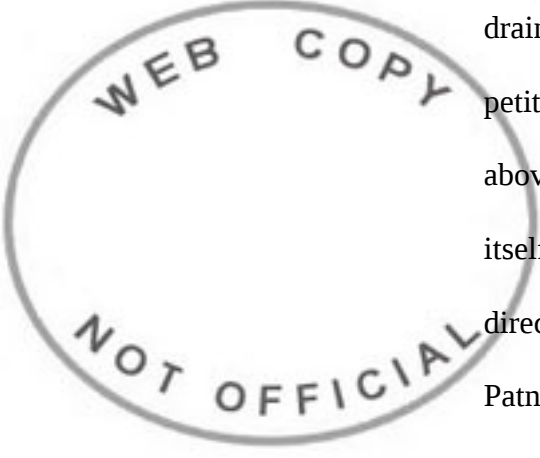
Appearance:
(In CWJC No. 14711 of 2009)
For the Petitioner/s : Mr. Sanjay Kumar
For the BSHB : Mr. Anshuman Singh

(In CWJC No. 6465 of 2007)
For the Petitioner/s : Mr. Sanjay Kumar
Mr. Amaresh Kumar Sinha
For the State : Mr. Utsav Kumar
For the BSHB : Mr. Anshuman Singh
For the PMC : Mr. Ajit Kumar

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 29 -01-2015

1. Initially, petitioner filed CWJC no.6465/2007 against the



respondents for issuance of a direction to the respondents to remove drains, roads underground pipelines from the private lands of the petitioner and for restoration of his possession upon his lands. The above stated CWJC no.6465/2007 was disposed of on admission stage itself by a coordinate bench of this court vide order dated 20.08.2007 directing the respondents-authorities including the State of Bihar, Patna Municipal Corporation and Bihar Raj Jal Parishad either to pay compensation to the petitioner at the present market value of the lands over which and beneath thereof construction has been raised or drains and pipelines have been laid within three months from the date of receipt/ production of a copy of the said order or remove the same within the above stated time.

2. The Bihar Housing State Housing Board, Patna through its officials filed Civil Review no 258/2010 against the order dated 20.08.2007 passed in CWJC no.6465/2007. The aforesaid Civil Review no 258/2010 was dismissed being not maintainable vide order dated 10.09.2012. The Patna Municipal Corporation, too, filed Civil Review no 351/2009 against the order dated 20.08.2007 passed in CWJC no.6465/2007 but Civil Review no 351/2009 was, too, dismissed vide order dated 21.04.2010.

3. After dismissal of Civil Review no 351/2009, Patna Municipal Corporation filed LPA no. 843/2010 against the order dated 21.04.2010 passed in Civil Review no 351/2009. The aforesaid LPA no. 843/2010 was allowed and accordingly, order dated 21.04.2010 passed in Civil Review no 351/2009 as well as order dated 20.08.2007



passed in CWJC no.6465/2007 were set aside and recalled and the matter was remanded back to this court giving opportunity to the writ petitioner to implead the Bihar Housing State Housing Board as party to the writ petition and to serve notice on the concerned party and furthermore, a direction was given by LPA court to give a chance to Patna Municipal Corporation and the State of Bihar to file counter affidavit and after that matter be decided on merit without being prejudiced by the order of the LPA court. Accordingly, CWJC no.6465/2007 has been placed before this court.

4. During pendency of the above stated CWJC no.6465/2007, petitioner filed CWJC no.14711/2009 against the respondents including the Bihar Housing State Housing Board for issuance of direction to the respondents to pay compensation to the petitioner at the present market value of the raiyati lands of the petitioner encroached by the concerned respondents without following due process of law and without payment of compensation in favour of the petitioner.

5. This court vide order dated 08.08.2013 directed the office to list both the above stated writ petitions together and accordingly, hearings of both the above stated writ petitions were taken up together and a common order is being passed in both the above stated writ petitions.

6. The case of the petitioner is that the lands situated at Mauze Hanuman Nagar bearing Thana no. 8, Touzi no. 275 khata nos. 44 and 45 having plot nos. 140, 142, 241, 242, 132 and 141 having



total area of 4 acres 88 decimal belonged to late Mahant Raghunath Das who happened to be father and Guru of the petitioner. The aforesaid lands were **Bakashat** lands of late Mahant Raghunath Das. The above stated lands were never vested in the State of Bihar and State Government fixed rent in the year 1966-67 and rent receipts were issued in favour of late Mahant Raghunath Das. After death of late Mahant Raghunath Das, petitioner inherited the aforesaid lands and being absolute owner of the aforesaid lands, came in possession of the said lands. The State of Bihar filed Title suit no. 395/1987 in the court of Sub Judge XI, Patna for declaration of its right, title and possession and also for declaration of order passed in Rent Fixation case no. 20/1966-67 as illegal and void but the aforesaid title suit was dismissed vide judgment and decree dated 09.11.2006. After dismissal of the aforesaid Title suit no. 395/1987, the State Government did not file any appeal and, therefore, the judgment and decree dated 09.11.2006 attained its finality. Further case of the petitioner is that after the above stated judgment and decree dated 09.11.2006, the officials of Patna Municipal Corporation started constructing drains, roads etc upon the above stated lands. The petitioner made protest before the Sub divisional Magistrate, Sadar, Patna by filing representation petition dated 07.12.2006 and also prayed for initiation of proceeding under section 144 of the Cr.P.C against Patna Municipal Corporation. The Sub divisional Magistrate, Sadar, Patna called for a report from the concerned police station but in the meantime, officials of Bihar Raj Jal Parishad started laying pipelines upon and inside of

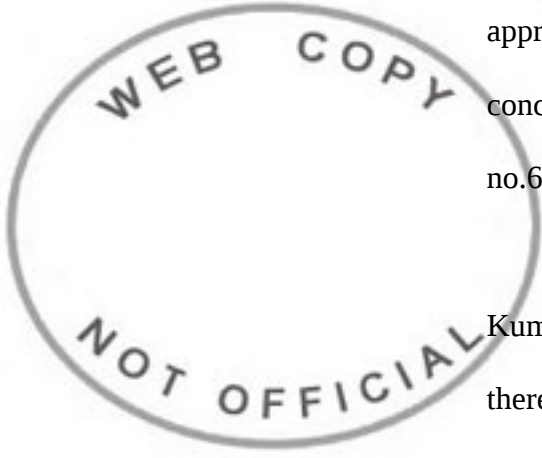
plot no. 141, 142 and 242 without any authority. Petitioner approached several authorities but his protests were not heard by the concerned authority as a result thereof petitioner filed CWJC no.6465/2007.

7. During the pendency of the aforesaid writ petition, one Kumkum Mishra and Archana Mishra filed I.A. petitions praying therein to implead them as respondents. The aforesaid petitions were allowed and accordingly, the above stated Kumkum Mishra and Archana Mishra were added as respondents to the writ petition.

8. Separate counter affidavits were filed by the officials respondents as well as private respondents.

9. The stand of the Bihar Housing State Housing Board is that District Land Acquisition officer acquired some parts of lands in question in the year 1957-58 after adopting procedure of Land Acquisition Act and possession of the aforesaid lands was handed over to the Bihar Housing State Housing Board. It has, specifically, been pleaded at para 6 of the counter affidavit filed on behalf of the respondent nos. 6 and 7 in CWJC no.14711/2009 that parts of survey plot nos. 142, 241 and 242 were acquired for the Bihar Housing State Housing Board in the year 1957-58 through Land Acquisition case no. 9/1957-58 and similarly, part of plot nos. 241 and 242 were acquired through Land Acquisition case no. 11/1975-76 in the year 1975-76. It is further case of the Bihar Housing State Housing Board that in Mauze Hanuman Nagar several lands were acquired in two phases.

10. The stand of the State of Bihar is that lands in question





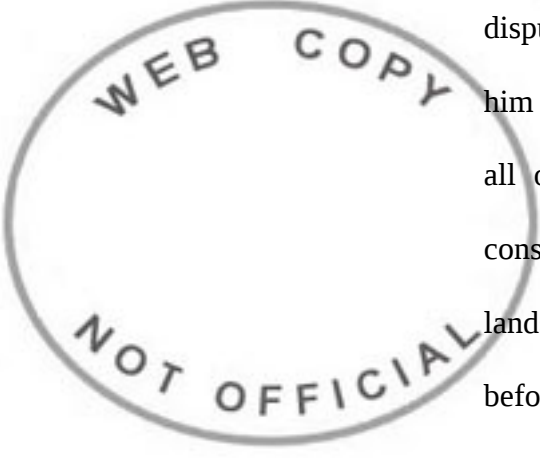
were Gairmazura Aam and the above stated lands were already acquired by the due process of law of Land Acquisition Act and compensation of the aforesaid lands has already been paid to the concerned Mukhiya of Grampanchyat. It is also stand of the State of Bihar that in cadastral survey khatian plot nos. 142, 241 and 242 were recorded as Gairmazura Aam and vide declaration no. B/L-P-III-18/56-2638-R dated 27.03.1957 near about 67.51 acres of lands were acquired for lower income group in Mauze Hanuman Nagar and 2.57 acres of plot no. 142 were acquired in Mauze Hanuman Nagar vide Land Acquisition case no. 190/1957-58 and Land Acquisition case no. 191/1957-58 but, at present, record of Land Acquisition case no. 9/1957-58 is not available in the office. The State has annexed declaration no. 2638 dated 27.03.1957 as well as plan of acquired lands as annexure B to its counter affidavit filed in CWJC no.14711/2009. Furthermore, it has been pleaded by the State that again, 20.625 acres lands of Mauze Hanuman Nagar were acquired on the basis of requisition filed by the Bihar Housing State Housing Board, Patna vide Land Acquisition case no. 11/1975-76. Annexure C of the counter affidavit is notification and declaration of the lands in question. It is also stand of the State that award was prepared and the compensation has already been paid to the concerned Mukhiya of Grampanchyat under section 12(2) of the Land Acquisition Act in Land Acquisition case no. 11/1975-76. Annexure D has been annexed to the counter affidavit to fortify the above stated pleading.

11. The stand of interveners is that they were parties to Title

suit no. 395/1987 being legal heirs of late Mahant Raghunath Das but by suppressing the aforesaid fact, petitioner filed the above stated writ petition with intention to grab entire compensation amount.

12. Petitioner has denied pleadings of interveners stating that in family arrangement petitioner got lands in question and for declaration of his right against interveners in respect of lands in question, he filed Title suit no. 17/2009 which was decided in his favour but admittedly, aforesaid Title suit no. 17/2009 was decreed ex-parte and against the ex-parte judgment and decree, interveners filed miscellaneous petition for setting aside the aforesaid ex-parte judgment and decree and the same is still pending.

13. Learned counsel appearing for the petitioner submits that lands in question belonged to late Mahant Raghunath Das who happens to be father of the petitioner and after death of late Mahant Raghunath Das, petitioner and his other legal heirs became absolute owner of the aforesaid lands. It is further submitted that family arrangement took place between the legal heirs of late Mahant Raghunath Das and in that said family arrangement, disputed lands fell in the share of the petitioner and accordingly, petitioner became absolute owner of the said lands. It is further contended by him that in the year 1966, rent of the aforesaid lands was fixed in Rent Fixation case no. 20/1966-67 and accordingly, rent receipts were issued in favour of the petitioner. It is further contended by him that the State of Bihar sought for declaration of his right, title and possession in respect of disputed property by filing Title suit no. 395/1987 but the State of



Bihar lost its suit and possession of the petitioner was found over disputed lands by a competent civil court. It is further contended by him that after passing judgment and decree in Title suit no. 395/1987, all of a sudden, officials of Patna Municipal Corporation started constructing drains, roads underground pipelines upon the disputed lands which was protested by the petitioner and he also filed a petition before the Sub divisional Magistrate, Sadar, Patna for initiation of proceeding under section 144 of the Cr.P.C but the concerned officials sat over the matter and thereafter, petitioner approached this court. It is further contended by him that lands in question were never acquired by the State of Bihar nor any document has been brought on behalf of the respondents to prove the aforesaid fact and, therefore, petitioner is entitled for the relief as sought for by him before this court.

14. On the other hand, learned counsel appearing for the Bihar Housing State Housing Board refuted the above stated submissions arguing that lands in question were recorded as Gairmazura Aam in cadastral survey khatiyani and State Government acquired survey plot no. 141 comprising an area of 0.44 acres and plot no. 142 comprising an area of 2.74 acres after following due process as prescribed under Land Acquisition Act, 1894 through Land Acquisition case no. 9/1957-58 and similarly, survey plot nos. 241 and 242 having an area of 0.50 acres and 0.42 acres respectively were acquired by State Government under the provision of Land Acquisition Act, 1894 through Land Acquisition case no. 11/1975-76 and the award was prepared in favour of Mukhiya of concerned



Grampanchyat in the light of letter of Revenue department, State of Bihar A/GM-49/69-344 R dated 15th January, 1969 and similarly, compensation of the aforesaid lands was paid in the light of letter no. 4670/DLA-CH 6/62 dated 29.05.1962. It is further contended by him that, as a matter of fact, lands in question were recorded as **Gairmazura Aam** in cadastral survey khatiyani and after abolition of zamindari, the aforesaid lands vested in the State of Bihar and ex-landlord had got no right to make settlement with any person in respect of the aforesaid lands. It is further contended by him that, as a matter of fact, a collusive suit of rent fixation was filed and the petitioner fraudulently obtained order of rent fixation in respect of the aforesaid lands and pursuant thereto rent receipts were issued in favour of the petitioner but when the aforesaid fact came to the notice of higher officials of the State of Bihar, Title suit no. 395/1987 was filed on behalf of the State of Bihar and unfortunately, State of Bihar lost the aforesaid suit. It is further contended by him that the Bihar Housing State Housing Board was not party to the aforesaid title suit and much prior to filing of the aforesaid title suit, lands in question had already been handed over to the Housing Board by the State of Bihar and, therefore, judgment and decree passed in the above stated title suit is not binding upon the Housing Board. It is further contended by him that admittedly, petitioner earlier filed CWJC no.6465/2007 for removal of drains, roads, underground pipelines and restoration of his possession upon dispute lands and during pendency of the aforesaid CWJC no.6465/2007, petitioner filed CWJC



no.14711/2009 for issuance of direction to the respondents to pay compensation to him in respect of disputed plots and, therefore, it is obvious from the aforesaid fact that the petitioner does not want to press CWJC no.6465/2007 and he is only interested to get compensation in respect of disputed lands. It is further contended by him that award in respect of acquisition of the disputed plots had already attained its finality and possession of disputed plots had already been handed over to the Housing Board since long ago and, therefore, at best, petitioner may claim compensation under section 30 of the Land Acquisition Act, 1984.

15. Learned counsel appearing for the Housing Board referred the decision of **Steel Authority of India Limited vs. Sutni Sangam and others reported in (2009) 16 Supreme court cases page 1** to fortify his stand that when the petitioner fails to make any objection under section 18 of the Land Acquisition Act, 1894 within prescribed period of limitation, now the petitioner can not raise question regarding validity of award as well as amount of compensation as the award has already attained its finality.

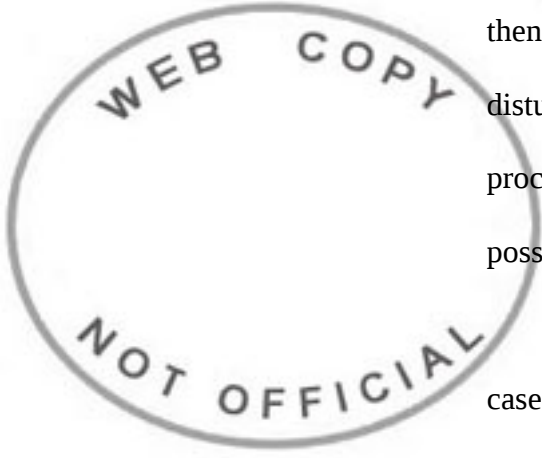
16. Another decision has been cited on behalf of the Housing Board is **May George vs. Special Tahsildar and others reported in (2010) 13 Supreme court cases page 98** in which it has been held by Apex Court that once award was made and possession taken, lands stood vested in State free from all encumbrances and it can not be divested even if some irregularity is found in award and furthermore, it was also held in the said decision that if very negligible area of the

aggrieved person in comparison to total land acquired is in dispute then, at behest of only one person acquisition proceedings can not be disturbed, particularly, in the circumstance, when the aforesaid proceeding is challenged at very belated stage after a decade taking possession of land in dispute.

17. In the above stated decision, appellant of the aforesaid case challenged acquisition of land on the ground that no notice under section 9(3) of the Land Acquisition Act, 1894 was served upon her but the Apex Court of this country was of the view that failure of issuance of notice under section 9(3) of the Land Acquisition Act, 1894 would not adversely affect subsequent proceeding including award and title of the government in acquired land because the person interested is only entitled to receive compensation and, therefore, such person may approach the Collector to make a reference to court under section 30 of the Land Acquisition Act, 1894 because irregularity in service of notice is a curable irregularity and on account thereof award under section 11 of the Act would not become invalid.

18. Another decision of **Leelawanti and others vs. State of Haryana and others reported in (2012) I Supreme court cases page 66** has also been cited on behalf of the Housing Board and in the aforesaid decision, Apex Court of this country has held that acquired land vests in the State free from all encumbrances and lands acquired for a particular purpose can be released for other public purposes.

19. The decision of **Sharda Devi vs. State of Bihar and others reported in 2003 Supreme court cases page 128** has also





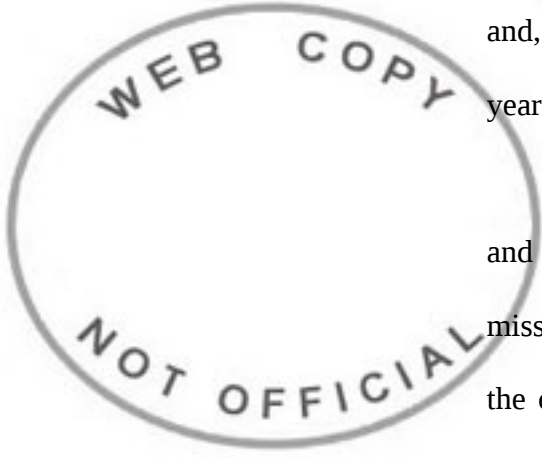
been cited on behalf of the Housing Board and in the aforesaid decision it has been held that provisions of sections 18 and 30 of the Land Acquisition Act, 1894 operate independently and do not overlap. It has also been held that under section 18 of the Land Acquisition Act, 1894, a period of limitation has been prescribed for filing application but under section 30 of the Land Acquisition Act, 1894, no such limitation is prescribed.

20. Certain facts are admitted in this case. It is an admitted position that plot no. 141 having an area of 0.44 acres, plot no. 142 having an area of 0.74 acres and plot no. 242 having an area of 54 decimals were recorded as **Gairmazura Aam** in cadastral survey khatian showing nature of the aforesaid lands as **AAHAR** which is evident from annexure A of the counter affidavit filed on behalf of the respondent no.3. Furthermore, it is also an admitted position that rents of the aforesaid lands were fixed in Rent Fixation case no. 20/1966-67 and rent receipts were issued in favour of the petitioner. It is also an admitted position that State Government filed Title suit no. 395/1987 in the court of Sub Judge XI, Patna for declaration of its right, title and possession in respect of the above stated lands but the aforesaid title suit of State Government was dismissed vide judgment and decree dated 09.11.2006 passed by Sub Judge XI, Patna.

21. The stand of respondents is that the aforesaid lands were acquired in two phases. Some parts of plots in question were acquired in the year 1957-58 through Land Acquisition case no.

9/1957-58 after adopting procedure of Land Acquisition Act, 1984 and, similarly, some parts of plots in question were acquired in the year 1975-76 through Land Acquisition case no. 11/1975-76.

22. It is also stand of the respondents that relevant files and documents relating to Land Acquisition case no. 9/1957-58 are missing from the concerned office but annexure B and annexure C to the counter affidavits filed on behalf of the respondent nos. 6 and 7 have been brought on record to show acquisition of lands in question. Annexure B is gazette notification of declaration dated 27.03.1957 made under section 4 of the Land Acquisition Act, 1894 by State Government and the aforesaid declaration reveals that the State Government intended to acquire some lands for public purpose, viz, for the lower income group by the People Cooperative Society Limited, Patna in village Hanuman Nagar and accordingly, by the aforesaid notification State Government declared its intention to acquire 67.51 acres lands of village Hanuman Nagar. The aforesaid annexure B shows that parts of survey plot nos. 142 and 242 of village Hanuman Nagar were shown in the southern boundary of proposed lands. Similarly, Annexure C reveals that on 14.11.1973 State Government made declaration under section 4 of the Land Acquisition Act, 1984 by which State Government expressed its intention to acquire the parts of plot nos. 241, 242 and 243 including other parts and in the northern boundary of the aforesaid proposed plots, several survey plots including parts of plot nos. 242 and 243 were shown. It is obvious from the aforesaid annexures B and C that State Government





made declaration under section 4 of the Land Acquisition Act, 1894 for the first time in the year 1957 but in the said year the State Government only proposed to acquire part of plot nos. 141 and 242 of village Hanuman Nagar and again, State Government made declaration under section 4 of the Land Acquisition Act, 1894 on 14.11.1973 and by the aforesaid declaration again, State Government proposed to acquire remaining area of plot nos. 242 and 243 because in both the aforesaid notifications, parts of the above stated plots were shown in the boundary of purposed lands.

23. The above stated annexure B and annexure C reveal that in the year 1956-57 parts of survey plot nos. 142 and 242 of village Hanuman Nagar were acquired and similarly, in the year 1957-58 remaining parts of the above stated plots were acquired as it is obvious from this fact that in the southern boundary of proposed lands of the year 1956-57, parts of survey plot nos. 142 and 242 were shown meaning thereby that some parts of survey plot nos. 142 and 242 were proposed to be acquired in the year 1957-58. Similarly, annexure C reveals that some parts of plot nos. 241, 242 and 243 were proposed to be acquired and in northern boundary of proposed plots, the parts of plot nos. 241 and 242 were shown and, therefore, it is apparent that remaining areas of plot nos. 241 and 242 which were not acquired in the year 1957-58, the same was proposed to be acquired in the year 1975-76. The aforesaid fact is corroborated by the planned map of acquired lands which has been annexed with the counter affidavit of respondents and the aforesaid documents go to show that



entire area of plots in question was acquired. Furthermore, two separate maps have also been brought on record to show that possession of the acquired lands had already been made to the concerned society. Annexure D to the counter affidavit of respondent no.3 goes to show that notice under section 12(2) of the Land Acquisition Act, 1894 had been issued to Mukhiya of concerned Grampanchayat for grant of compensation. Therefore, the aforesaid fact goes to show that lands in question had already been acquired by the government.

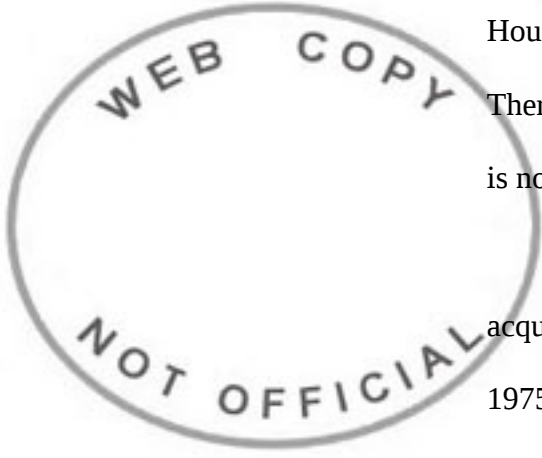
24. It is not in dispute that State Government filed Title suit no. 395/1987 before Sub Judge XI, Patna for declaration of its right, title and possession in respect of the above stated lands as well as some other lands but State Government did not disclose this fact in the aforesaid Title suit no. 395/1987 that lands in question had already been acquired. No doubt, defendants of the aforesaid title suit pleaded in their written statement that their some lands were acquired by the State Government and they had already got compensation in respect of those lands. Certified copy of the judgment and decree passed in Title suit no. 395/1987 have been brought on record before this court and from perusal of the judgment and decree passed in Title suit no. 395/1987, I find that learned Sub Judge XI, Patna never framed this issue as to whether lands in question of the present writ had been acquired by the State Government or not and , therefore, the above stated dispute was not the subject matter of Title suit no. 395/1987 . Moreover, admittedly, Housing Board was not party to Title suit no.

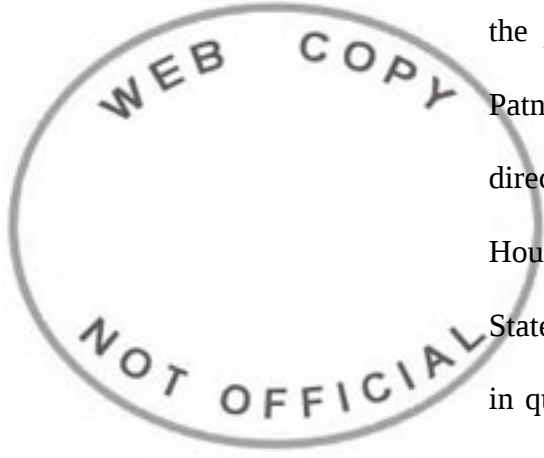
395/1987 and lands in question had already been handed over to Housing Board much prior to filing of Title suit no. 395/1987. Therefore, the judgment and decree passed in Title suit no. 395/1987 is not binding upon the Housing Board.

25. It is an admitted position that lands in question were acquired in two phases i.e. in the year 1957-58 as well as in the year 1975-76 but the petitioner filed CWJC no. 6465/2007 in the year 2007 i.e. after seven years of acquisition of lands in question and, therefore, in my view, after such a long delay, petitioner can not challenge the proceeding of acquisition of lands even on the ground that he had no knowledge of acquisition of lands in question nor any notice was ever served to him and, in my view, the aforesaid long delay in challenging the award is itself sufficient to reject the claim of the petitioner.

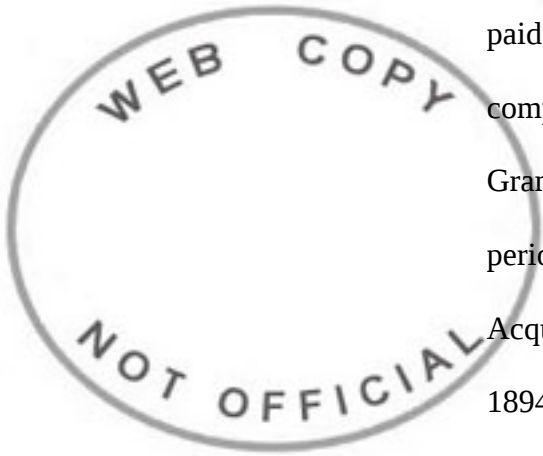
26. It is also an admitted position that earlier petitioner filed CWJC no.6465/2007 without impleading Housing Board as respondent to the aforesaid writ petition and the aforesaid writ petition was allowed by this court vide order dated 20.08.2007 directing the respondents of the aforesaid writ petition either to pay compensation to the petitioner at the present market value of lands or remove encroachment from suit lands within a certain period of time.

27. Admittedly, factum of so-called acquisition of lands was not pleaded by the petitioner in the aforesaid CWJC no.6465/2007 and for the first time, factum of acquisition of lands in question was brought to the notice of the court when the above stated fact was placed before Division Bench in LPA no. 843/2010 and





thereafter, division bench of this court in LPA no. 843/2010 directed the petitioner to implead the Bihar Housing State Housing Board, Patna as party to the writ petition and furthermore, this court was directed to hear the matter afresh. It is pertinent to note here that when Housing Board was impleaded as party to CWJC no.6465/2007, the State as well as Housing Board placed factum of acquisition of lands in question. It is also an admitted position that when Housing Board was impleaded as respondent in CWJC no.6465/2007 and placed fact of acquisition of lands, petitioner filed CWJC no.14711/2009 for issuance of direction to the respondents to pay compensation to him on account of encroachment of his raiyati lands by respondents without following due process of law and without making payment of compensation in favour of the petitioner. Therefore, it is clear from the aforesaid fact that now, the petitioner has relinquished his claim of restoration of his possession over the disputed lands or for removal of so-called encroachment made upon disputed lands and the petitioner is only interested in payment of compensation in respect of disputed lands at market value of present day. Therefore, it is obvious that the petitioner has impliedly accepted acquisition of lands in question in the manner as stated by the respondents and now, when the petitioner is not disputing acquisition proceeding and preparation of award in respect of disputed lands and he is only interested to claim compensation in respect of acquisition of lands, in my view, there is no other alternative for the petitioner except to make claim before the concerned Collector under section 30 of the Land Acquisition Act,



1894 because it is an admitted position that no compensation had been paid to the petitioner in respect of disputed lands and even if any compensation was paid that was paid only to Mukhiya of Grampanchyat. Furthermore, it is also an admitted position that no period of limitation for making reference under section 30 of the Land Acquisition Act, 1894 has been provided in Land Acquisition Act, 1894 and reference under section 30 of the Land Acquisition Act, 1894 can be made within a reasonable period of preparation of award.

28. Accordingly, in view of the aforesaid discussions, the above stated writ petitions stand disposed of giving liberty to the petitioner as well as interveners of this case to approach the concerned Collector and make prayer under section 30 of the Land Acquisition Act, 1894 within three months from the date of this order for making reference to the court under the above stated section and if the petitioner or interveners do so, the concerned Collector shall refer the dispute to the court under section 30 of the Land Acquisition Act, 1894 without taking note of this fact that lands in question are said to have been acquired in the year 1957-58 and 1976-77 and dispute in respect of acquisition of lands is raised after such a long time.

Shahid

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(Hemant Kumar Srivastava,J)