

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.230 of 2015

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Sri Parmanand Prasad Singh S/O Late Ganpat Prasad Singh, r/o village Surhari,
P.S.- Mofassil, Dist.- Gaya and presently resident of L/93 Housing Board Colony,
Anugrahpuri, P.S.- Rampur, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Magadh Division, Gaya, Bihar
3. The District Collector, Gaya, Bihar
4. The District Land Acquisition Officer, Gaya, Bihar
5. The District Sub-Registrar, Gaya, Bihar
6. The Director General, Border Security Forces (Ministry of Home
Affairs, Government of India), New Delhi- 62

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Surendra Kr.Singh, Sr.Advocate Mr. Om Prakash Agrawal, Advocate
For the Respondent Nos. 1 to 5	:	Mr.Rajiv Kumar Singh, GP 2
For the Respondent No. 6	:	Mr.S.D.Sanjay, Additional Solicitor General Mr. Anshay Bahadur Mathur, CGC

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 02-09-2015

Heard the parties.

2. The matter at issue is the acquisition of 99 decimals of land belonging to the petitioner in the district of Gaya and payment of compensation thereof.

3. The brief facts necessary for disposal of the present writ petition are as under :-

On the requisition made by the respondent no.6, a land acquisition proceeding was started under the provisions of The Land Acquisition Act, 1894 (in short, "Act, 1894"). Accordingly, a notification dated 19.08.2013 under Section 4 read with 17 (4) of the Act, 1894 for acquiring 47.97 acres of lands situate at village Iguna, Anchal Manpur, District Gaya for public purposes i.e. for



construction of quarters for Border Security Force, as contained in Annexure-1 to the writ petition, was published in a news paper in its edition dated 31.08.2013. In the aforesaid notification published on 31.08.2013, details of plot numbers to be acquired have been mentioned, which includes plot nos. 67 and 117 belonging to the petitioner. It is the case of the petitioner that the lands of khata no. 52, plot nos. 67 and 117, total area being 99 decimals are the ancestral property of the petitioner (hereinafter to be referred as “the land in question”). Another notification dated 20.08.2013 in terms of Section 6 of the Act, 1894 was issued making a declaration that aforesaid 47.97 acres of lands including the land in question are required for public purposes, which was also published in the news paper on 01.09.2013 (Annexure-2). Subsequently, an award was prepared under Section 11 of the Act, 1894. An undated notice (Annexure-3) was issued purportedly under Section 12 (2) of the Act, 1894 directing the petitioner to receive an amount of Rs.23,41,491.00 by way of 80% compensation on 27.01.2014, failing which he shall not be paid interest.

4. In the present proceeding filed under Article 226 of the Constitution of India, the petitioner has assailed the validity and correctness of the notifications as contained in Annexures 1 and 2 as also the notice, as contained in Annexure-3, on various grounds.

5. Learned senior counsel appearing on behalf of the petitioner submits that in the factual background of the case, notification dated 19.08.2013 (Annexure-1) issued under Section 4 read with Section 17 (4) of the Act, 1894 dispensing with the enquiry as required under Section 5A of the Act, 1894 cannot be justified and therefore, entire land acquisition proceeding, so far it relates to the lands of the petitioner, is liable to be quashed. Alternatively, it was



submitted that since award was not prepared with respect to the lands of the petitioner prior to 01.01.2014, therefore, in view of the provisions contained in Section 24 (1) (a) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, “Act, 2013”), the petitioner is entitled to receive compensation under the provisions of the Act, 2013. It was pointed out that, in fact, in the present case award was prepared and signed by the Collector under the Act, 1894 on 20th January, 2014. Therefore, the quantum of 80% compensation fixed as per notice (Annexure-3) is highly inadequate and inappropriate. It is pleaded that the quantum of compensation is required to be re-fixed under the provisions of the Act, 2013. It is further pointed out that, being aggrieved by impugned action of the respondents, one Satish Kumar of Gaya district filed CWJC No. 4299 of 2014, whose lands were also acquired by the impugned notifications as contained in Annexures-1 and 2, and, the aforesaid writ petition was finally disposed of by a Bench of this Court by an order dated 12.08.2014 (Annexure-5), wherein it was held that the petitioner of that case was entitled for compensation under the provisions of Act, 2013. Accordingly, direction was issued to the State Government to prepare the award in terms of the Act, 2013 and make payment of compensation to the petitioner of that case accordingly. It is pleaded that the petitioner is also entitled to same relief particularly in view of the ratio laid down by the Hon’ble Apex Court in the case of **Pune Municipal Corporation Vs. Harakchand Misirimal Solanki [(2014) 3 SCC 183]**.

6. The matter has been contested by the respondents by filing separate sets of counter affidavits/supplementary counter affidavits. Respondent nos. 1 to 5 represented by learned G.P.2 have



filed their counter affidavit as also supplementary counter affidavit. Learned GP 2, by referring to the averments made in the aforesaid counter affidavit and supplementary counter affidavit, has fairly submitted that, in fact, the land acquisition proceeding was started under the provisions of the Act, 1894, but award could be prepared and signed on 20th January, 2014. He fairly conceded that the amount of award so prepared under the provisions of the Act, 1894, has not been received by the petitioner till date. However, he asserted that in the light of the judgment/order passed by a Bench of this Court, as contained in Annexure-5, the compensation payable to the petitioner was calculated afresh in terms of Section 24 (1) (a) of the Act, 2013 and now the petitioner is entitled to receive compensation to the tune of Rs.49,49,493.00. He also points out that after aforesaid re-calculation of the compensation amount payable to the petitioner, the respondent District Land Acquisition Officer, Gaya has already made a request to the Requisitioning Authority for providing additional fund, so that payment is made to the petitioner.

7. Learned Additional Solicitor General, appearing on behalf of the respondent no.6, by referring to the averments made in the counter affidavit filed on his behalf, has submitted that, in fact, original requisition was for acquisition of 74 acres of land for establishment of Reserve Battalion of Border Security Force at village Iguna, Anchal Manpur, District Gaya and estimated cost for acquisition of aforesaid area of land was Rs.16,78,57,310.00, out of which Rs.12,85,93,838.00 was deposited with the respondent District Land Acquisition Officer, Gaya. However, in view of demand of additional amount for acquiring the aforesaid 74 acres of land, area of lands required was reduced by letter dated 26.12.2013 (Annexure-C to the counter affidavit) and request was made to acquire only 41.43



acres of land for which amount had already been deposited by the respondent no.6. He has further submitted that acquisition proceeding so started was not completed by the State Government within a reasonable period of time under the provisions of the Act, 1894. Therefore, according to him, additional amount of compensation required to be paid to the petitioner is required to be paid by the State Government and not by the respondent no.6. In support of his above contention, he has placed reliance upon a decision of a learned Single Judge of this Court in the case of **Janki Devi Vs.The State of Bihar [2014 (4) PLJR 190]**.

8. Initially, some dispute was raised on behalf of the parties about the date of preparation and signing of award with respect to the lands in question. Therefore, by order dated 11.08.2015, the learned GP 2 appearing on behalf of the State authorities was directed to produce the original records of land acquisition case and accordingly, the learned GP 2 has produced the relevant records and on verification of the records, learned counsel appearing on behalf of the petitioner as also learned Additional Solicitor General appearing on behalf of the respondent no.6, have accepted that the award so prepared was signed on 20th January, 2014. Now, there is no controversy about the date of the award so prepared and signed on 20th January, 2014.

9. Originally, learned senior counsel appearing on behalf of the petitioner had assailed the validity and correctness of the notification issued under Section 4 read with Section 17 (4) of the Act, 1894 as also notification issued/declaration made under Section 6 of the Act, 1894, but finally he submitted that if the adequate amount of compensation is paid to the petitioner under the provisions of the Act, 2013, then the petitioner will be satisfied and shall not

press the points regarding validity and correctness of impugned notifications, as contained in Annexures- 1 and 2. Now, the respondent nos. 1 to 5 have taken a plea that compensation payable to the petitioner under the provisions of the Act, 2013 has been re-calculated and he is entitled to receive compensation to the tune of Rs.49,49,493.00.

10. In above view of the matter, this Court is not required to go into the correctness or otherwise of the impugned notifications as contained in Annexures- 1 and 2.

11. In order to appreciate the issues raised regarding quantum of compensation payable to the petitioner for the lands acquired by the respondents, it will be necessary to examine Section 24 of the Act, 2013, which reads as follows:

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases:- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not

been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

12. The scheme and scope of Section 24 of the Act, 2013 also came up for consideration recently before the Hon’ble Apex Court in the case of **Pune Municipal Corporation Vs. Harakchand Misirimal Solanki (supra)** and paragraphs 10 and 11 of the aforesaid judgment are relevant, which are reproduced hereinbelow:

“**10.** Insofar as sub-section (1) of Section 24 is concerned, it begins with non obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of the 2013 Act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of the 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24 (1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed.

11. Section 24 (2) also begins with non obstante clause. This provision has overriding effect over Section 24 (1). Section 24 (2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid; such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the

2013 Act. The proviso appended to Section 24 (2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section 4 notification become entitled to compensation under the 2013 Act.”

13. Indisputably, in the present case award was prepared and signed on 20th January, 2014. Therefore, in view of provisions contained in Section 24 (1) (a) and the principles enunciated by the Hon’ble Apex Court in the case of **Pune Municipal Corporation Vs. Harakchand Misirimal Solanki (supra)**, this Court has no hesitation in holding that the petitioner is entitled to receive compensation under the provisions of the Act, 2013. The respondent nos. 1 to 5 have taken a plea that, in fact, compensation payable to the petitioner was re-determined and he is entitled to receive compensation to the extent of Rs. 49,49,493.00 under the provisions of the Act, 2013. At this stage, learned senior counsel appearing on behalf of the petitioner submits that, in fact, calculation made by the respondent authorities is not correct and requires further revision in accordance with the provisions contained in the First Schedule of the Act, 2013.

14. Learned Additional Solicitor General, appearing on behalf of the respondent no. 6 has contended that additional amount of compensation payable to the petitioner is not required to be paid by the respondent no.6 despite request made by the District Land Acquisition Officer, Gaya, but it is required to be paid by the State Government. This Court is afraid that the submissions made by the learned Additional Solicitor General is completely misconceived and cannot be countenanced. Requisitioning Authority could not have



fixed the quantum of compensation. In fact, amount of compensation was/is required to be fixed by the Collector under the Act and not by the Requisitioning Authority. Under the old Act, 80% compensation payable to the petitioner was assessed to be Rs.23,41,491.00 only, but admittedly the award was prepared and signed on 20th January, 2014 i.e. after coming into force of the Act, 2013. Therefore, the amount of compensation payable to the petitioner has been re-determined, as noticed above, and additional amount is required to be paid by the Requisitioning Authority and not by the State Government. Facts and circumstances in the case of **Janki Devi Vs.The State of Bihar (supra)**, was entirely different on which reliance was placed on behalf of the respondent no.6, and the principles laid down there would not salvage the respondent no.6.

15. Now, so far as the plea raised on behalf of the petitioner that quantum of compensation fixed by the State Government to the tune of Rs.49,49,493.00 under the provisions of the Act, 2013 is either inadequate or not correctly calculated is concerned, he has alternative and efficacious remedy under Section 64 of the Act, 2013. He is required to file a petition to the Collector for making a reference for determination of the authority about the quantum of compensation payable to the petitioner under the provisions of the Act, 2013. Learned GP 2 has produced two notifications dated 10th November, 2014 and 13th May, 2015 whereby the District and Sessions Judge of the concerned district of the State of Bihar have been vested with the power as an Authority under the provision of Section 64 of the Act, 2013.

16. For the reasons recorded above, it is declared that the petitioner is entitled to receive compensation under the provisions of the Act, 2013. The respondent no.6 shall be obliged to release the

balance amount in favour of the State Government for payment of adequate compensation to the petitioner. The petitioner shall be entitled to receive the amount so calculated under the Act, 2013, under protest, if he is not satisfied with the quantum of compensation so fixed by the State authority and thereafter, he shall be at liberty to file an appropriate petition under Section 64 of the Act, 2013 for enhancement of quantum of compensation. If such a petition is filed on behalf of the petitioner, the same shall be considered and decided in accordance with the provisions of Section 64 of the Act, 2013.

17. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. The parties are left to bear their own costs.

18. Learned GP 2 shall, now, return the original record of the land acquisition proceeding to the authority concerned.

(Birendra Prasad Verma, J)

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