

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25081 of 2013

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Dinesh Chandra Thakur son of Sri Yogendra Thakur, resident of Village Kanhawa,
P.S.Bela, District Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna
3. The Collector, Sitamarhi
4. The District Land Acquisition Officer, Sitamarhi
5. The Commandant, SSB, Shantinagar, D.T.I. Campus, Dumra, P.S.Dumra, District Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
Mrs. Sandhya Kumari Sinha, Advocate

For the Respondent/s : Mr. Ajay Kumar Sharma, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 19-07-2016

The learned counsel appearing on behalf of the petitioner seeks leave of this Court to correct the name of the father of the petitioner as Yogendra Thakur instead of Dharendra Thakur.

2. Leave is granted.

3. Necessary corrections in the cause title of the writ petition as also in the affidavit to the writ petition with respect to the name of the father of the petitioner must be done in course of the day.

4. This is, in fact, third round of litigation with respect to the Land Acquisition Case No. 8 of 2005-06 initiated and concluded in the district of Sitamarhi.

5. The petitioner is, now, aggrieved by order dated 26.03.2012 passed in aforesaid Land Acquisition Case No. 8 of 2005-06 by the respondent District Land Acquisition Officer, Sitamarhi, as contained in Annexure 13 to the writ petition, whereby the petition

filed on behalf of the petitioner under Section 18 read with Section 30 of The Land Acquisition Act, 1894 (in short, "the Act") for reference to the Civil Court for enhancement of the quantum of compensation as also for apportionment of the award amount has been rejected on the ground of being barred by limitation.

6. It is not in dispute that aforesaid Land Acquisition Case No. 8 of 2005-06 was initiated by the Collector under the Act for acquisition of 2.50 acres of lands including the lands in question claimed by the petitioner, fully detailed in paragraph 3 of the writ petition, for establishment of Company Headquarters of SSB (Seema Suraksha Bal). A notification under Section 4 read with Section 17(4) of the Act was issued by the Collector under the Act. Subsequently, declaration under Section 6 of the Act was made by the Collector under the Act. Thereafter notice under Section 9 (3) and (4) of the Act was issued on 18.12.2006 in the name of one Yogendra Thakur, the father of the petitioner, fixing 05.01.2007 enabling him to file objection, if any. The aforesaid notice dated 18.12.2006 has been brought on record as Annexure-1 to the writ petition. The landholder Yogendra Thakur, the father of the petitioner, filed an objection and made a prayer that the lands in question belonging to him may be released from the land acquisition proceeding and in case that prayer is not accepted, then appropriate amount of compensation may be paid to him. Since the objection dated 08.01.2007 filed on behalf of the father of the petitioner, which has been brought on record as Annexure-3 to the writ petition, was not considered by the Collector under the Act, he moved before this Court in CWJC No. 1480 of 2007. However, aforesaid CWJC No. 1480 of 2007 filed by the father of the petitioner was finally dismissed as withdrawn by order dated 14.01.2009 (Annexure-4) by a Bench of this Court. This was the first

round of litigation.

7. Thereafter, the petitioner filed an objection before the respondent District Collector, Sitamarhi, which has been brought on the record as Annexure-5 to the writ petition, making a prayer that the lands in question belonging to him may be released from the land acquisition proceeding. The petition filed on behalf of the petitioner was considered by the respondent District Land Acquisition Officer, Sitamarhi, the Collector under the Act, and his petition was finally rejected by order dated 25.05.2009 (Annexure-6) by recording a finding of fact that the entire proceeding in the land acquisition case in question has been completed and possession over the lands in question has been handed over to the requisitioning department on 09.07.2008 and amount of compensation has also been received by one of the landholders. In above background, as the proceeding had already been concluded, the prayer made on behalf of the petitioner could not be considered and accordingly his petition was rejected by aforesaid order dated 25.05.2009 (Annexure-6).

8. From the plain reading of the order dated 25.05.2009 (Annexure-6) passed by the District Land Acquisition Officer, Sitamarhi, three things are apparent. Firstly, on the basis of order passed/notification issued in Land Acquisition Case No. 8 of 2005-06 possession over the land in question, claimed by the petitioner, had already been taken and possession was handed over to the requisitioning department on 09.07.2008. Secondly, the entire proceeding of the land acquisition case has been completed and thirdly, the amount of compensation determined by the Collector under the Act has been received by one of the landholders. Therefore, subsequent plea taken by the petitioner that he has no knowledge/information about the preparation of award with respect

to the lands in question cannot be countenanced.

9. The petitioner, being aggrieved by the aforesaid order dated 25.05.2009 (Annexure-6), preferred CWJC No. 10995 of 2009 before this Court, which was ultimately disposed by a Bench of this Court by order dated 28.08.2009 (Annexure-7) by recording a finding of fact that the award has already been prepared and possession over the lands in question has been handed over to the concerned department. The petitioner, being not satisfied with the said order passed by a learned Single Judge of this Court, filed LPA No. 1271 of 2009 which was finally heard and dismissed by a Division Bench of this Court by a reasoned and speaking order on 11.05.2010 (Annexure-8). While dismissing the aforesaid LPA filed on behalf of the petitioner, the Division Bench also noticed that after conclusion of the land acquisition proceeding award has been prepared and possession over the land in question has already been handed over to the requisitioning department way back on 09.07.2008. The petitioner still, being not satisfied with the order passed by the learned Single Judge as also by a Division Bench of this Court, approached the Hon'ble Supreme Court in Special Leave to Appeal, but the aforesaid SLP was finally dismissed by order dated 18.03.2011 by the Hon'ble Apex Court, which has been brought on the record as Annexure-9 to the writ petition.

10. From the facts noticed above, particularly, from the order dated 25.05.2009 (Annexure-6) passed by the Collector under the Act, the order dated 28.08.2009 (Annexure-7) passed by the learned Single Judge of this Court, order dated 11.05.2010 (Annexure-8) passed by a Division Bench of this Court as also the order dated 18.03.2011 (Annexure-9) passed by the Hon'ble Supreme Court, it is apparent that the petitioner was fully aware about the

preparation of the award with respect to the lands in question and payment of compensation made to his father Yogendra Thakur for the acquisition of the lands in question. This was, in fact, second round of litigation, but the claim raised on behalf of the petitioner was rejected not only by this Court, but also up to the Hon'ble Supreme Court.

11. Now, third round of litigation was started at the behest of the petitioner. He filed a petition under Section 30 of the Act on 25.04.2011 (Annexure-10) making a prayer for referring the matter to the civil court for apportionment of the award amount. He filed another petition on 05.07.2011 (Annexure-12) under Section 18 of the Act making a prayer for referring the matter to the Civil Court for enhancement of the quantum of award amount determined by the Collector under the Act for the acquisition of the lands in question. The aforesaid two petitions filed on behalf of the petitioner were considered by the respondent District Land Acquisition Officer, Sitamarhi and he by the impugned order dated 26.03.2012 (Annexure-13) rejected his aforesaid two petitions on the ground of being barred by limitation. While passing the aforesaid order it has been recorded that the award was prepared on 25.05.2008 and possession was handed over to the requisitioning department on 09.07.2008 and his earlier objection petition was rejected on the ground of limitation by the District Land Acquisition Officer, Sitamarhi in the year 2009 itself. Hence, it was contended that on the ground of expiry of six months from the date of preparation of the award and after six weeks of the service of notice issued under Section 12(2) of the Act, the matter cannot be referred to the Civil Court.

12. The learned counsel appearing on behalf of the



petitioner, while assailing the validity and correctness of the impugned order, has submitted that the petitioner had no knowledge/information about the preparation of award in the year 2008 and no notice was served upon him under Section 12(2) of the Act, 1894. According to him, the petitioner came to know about preparation of award on 25.06.2011. Thereafter, he filed a petition on 05.07.2011(Annexure-12). Hence, according to him, it was within the period of six months from the date of knowledge of the award, but the respondent District Land Acquisition Officer, Sitamarhi has illegally rejected his prayer by the impugned order dated 26.03.2012 which cannot be sustained in law. In support of his above contention, he has placed reliance on a judgment of the Hon'ble Apex Court in the case of **Bhagwan Das and others Vs.State of Uttar Pradesh and others [(2010) 3 SCC 545]** (particularly paragraphs 19, 28, 30 and 36).

13. Per contra, the learned AC to PAAG, appearing on behalf of the respondents, has contested the matter and supported the impugned order. According to him, award was prepared on 25.05.2008 and earlier objection petition filed on behalf of the petitioner was rejected by the District Land Acquisition Officer, Sitamarhi on 25.05.2009 (Annexure-6), wherein it was recorded that the land acquisition proceeding has been concluded. It is next contended that before the learned Single Judge as also the Division Bench of this Court it was contended on behalf of the respondents that award has been prepared with respect to the lands in question, therefore, the prayer made by the petitioner for release of the lands in question cannot be accepted. According to him, contentions raised on behalf of the respondents were accepted and the writ petition as also the LPA filed on behalf of the petitioner were dismissed vide orders



contained in Annexures - 7 and 8 respectively and the aforesaid orders were affirmed by the Hon'ble Supreme Court vide order as contained in Annexure-9. Hence, according to him, as the petitioner had full knowledge/information about the preparation of the award way back in the year 2009 itself, he could not have filed a petition under Sections 18 and 30 of the Act in the year 2011 seeking reference of the matter to the civil court; therefore, it has rightly been rejected by the impugned order dated 26.03.2012 (Annexure-13). He has also heavily placed reliance on the judgment of Hon'ble Apex Court in the Case of **Bhagwan Das and others.Vs.State of Uttar Pradesh and Others (supra)** by referring to paragraphs 14 to 16 and 25.

14. After having heard the parties and on consideration of the materials available on the record, this Court finds that there is no dispute that the Land Acquisition Case No. 8 of 2005-06 was started for acquisition of the lands in question for establishment of Company Headquarters of SSB. Thereafter, award was prepared on 25.05.2008 and possession over the lands in question was handing over to the requisitionist on 09.07.2008. In the first round of litigation, the father of the petitioner wanted exemption of the lands in question from the land acquisition proceeding, but he failed up to this Court. Finally, he accepted the order passed by the Land Acquisition Officer and received the amount of award. Subsequently, the petitioner indirectly stepped in to the shoes of his father and took a plea before the Collector under the Act that the land in question does not belong to his father, rather it belongs to the petitioner; therefore, the award amount should have been given to him and not to his father. The plea raised on behalf of the petitioner for exemption of the lands in question from the land acquisition proceeding was not accepted by the



District Land Acquisition Officer, Sitamarhi, the learned single Judge as also the Division Bench of this Court and the Hon'ble Supreme Court vide orders contained in Annexures- 6 to 9 respectively, on the ground that the award has already been prepared with respect to the lands in question. The petitioner failed in the second round of litigation up to the Hon'ble Supreme Court. Then he filed two separate petitions; one under Section 30 and another under Section 18 of the Act, which have been brought on the record as Annexures-10 and 12 respectively. In the first petition (Annexure-10) he has prayed for reference to the civil court for apportionment of the award amount and in second petition (Annexure-12) he has prayed for reference to the civil court for enhancement of the compensation amount. Both the petitions were considered by the District Land Acquisition Officer, Sitamarhi and rejected by the impugned order dated 26.03.2012 (Annexure-13).

15. In the present proceeding filed under Article 226 of the Constitution of India, the father of the petitioner Yogendra Thakur has not been impleaded as party respondent. If the award amount has been received by his father and the prayer of the petitioner for a apportionment is required to be considered, then certainly the amount so received is required to be recovered from aforesaid Yogendra Thakur, but admittedly, he is not a party in the present proceeding. Hence, that prayer cannot be acceded to in absence of aforesaid Yogendra Thakur, being a party respondent. Evidently, the present writ petition suffers from non-joinder of necessary parties.

16. From perusal of the orders contained in Annexures 6, 7, 8 and 9, it is evident that the petitioner came to know about the preparation of award way back in the year 2009, yet he did not file any petition within time for reference of the matter to the civil court



either in terms of Section 18 or 30 of the Act. The plea taken on behalf of the petitioner that he got knowledge/information about preparation of the award in question in the year 2011 cannot be countenanced. Under the provision of the Act, 1894, the Collector under the Act has no power for condonation of delay in filing the petition under Section 18 or 30 of the Act, as has been held in paragraph 16 by the Hon'ble Supreme Court in the case of **Bhagwan Das and others Vs. State of Uttar Pradesh and others (supra)**. Now, it is well settled that Section 29 (2) of the Limitation Act is not applicable for condonation of limitation provided under Section 18 of the Act. Therefore, the benefit of Sections 4 to 24 of the Limitation Act, 1963 is not available in respect of the petition filed under Section 18 (1) of the Act. Reference in this regard may be made to yet another judgment of the Hon'ble Supreme Court in the case of **Officer on Special Duty (Land Acquisition) Vs. Shah Manilal Chandulal [(1996) 9 SCC 414]**. Above being the settled law and the petitioner was having knowledge/information about the preparation of the award way back in the year 2009, his petition under Section 18 or 30 of the Act, 1894 could not have been entertained by the respondent District Land Acquisition Officer, Sitamarhi even if date of knowledge of preparation of Award was taken as the commencement of period of limitation under Section 18 of the Act and it has rightly been dismissed by him by the impugned order dated 26.03.2012.

17. From the facts noticed above, it is apparent that the petitioner has abused the process of law by filing frivolous petitions one after another, even though the plea raised on his behalf was not accepted up to the Hon'ble Supreme Court. In above view of the matter, this Court is of the opinion that the writ petition should not

only be dismissed but it should be dismissed by awarding heavy costs against the petitioner. Accordingly, the present writ petition is dismissed with costs of Rs.50,000/- (Rupees fifty thousand), which must be deposited by the petitioner in the District Treasury, Sitamarhi within a period of three months from today. If the aforesaid costs is not deposited by the petitioner within the time prescribed, then the District Collector, Sitamarhi shall be obliged to initiate an appropriate proceeding for recovery of the aforesaid amount of costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	22.07.2016
Transmission Date	