

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3615 of 2011

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Md. Jeebrail son of late Ijrail Shekh @ Md. Ijrail, resident of Naya Chouk, (Beside Bhagat Singh Park), near Head post Office Buxar, P.S. Buxar (Town), District Buxar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Main Secretariat, Patna.
3. The Land Reforms Commissioner, Government of Bihar, Main Secretariat, Patna.
4. The Principal Secretary, Revenue Department, Government of Bihar, Main Secretariat, Patna.
5. District Magistrate-cum-Collector, Buxar, District Buxar.
6. The District Land Acquisition Officer, Buxar, Collectorat Buxar, District Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma, Adv.
 Mr. Manendra Kumar Singh, Adv.
 Mr. Anjani Kumar, Adv.
 Mr. Abhishek Anand, Adv.

For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 10-08-2016

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondent authorities not to take possession over the lands in question bearing C.S. Plot No. 45 corresponding to R.S. plot no. 38 area 1.94 acres situate at Mauza Sohnipatti, District Buxar for widening of National Highway- 84 from Patna to Buxar.

3. The learned counsel appearing on behalf of the petitioner submits that the lands in question was never acquired by the respondent authorities on permanent basis and, therefore, until and unless a proper proceeding is initiated for acquisition of the lands in question, they may be directed not to take possession over the same. According to him, a proceeding under Section 35(1) of The Land

Acquisition Act, 1894 (in short Act, 1894) was started earlier giving rise to Case No. 176T of 1971-72 for acquisition of new plot no. 38 (old plot no. 45) situate at mauza Sohnipatti against the father and uncle of the petitioner, but on the basis of aforesaid proceeding, which was for a limited period, the respondent authorities cannot be permitted to take possession on permanent basis over the land in question claimed by the petitioner.

4. In compliance of the order dated 25.02.2011 passed by a Bench of this Court, a detailed counter-affidavit on behalf of the respondent nos. 5 and 6 was filed on 19th December, 2011 after service of its copy upon the learned counsel appearing on behalf of the petitioner. The learned AC to AG appearing on behalf of the respondents, by referring to the averments made in the aforesaid counter-affidavit, submits that, in fact, for acquisition of certain parcels of lands bearing khata no. 95, CS Plot No. 45, area 1.94 acres and plot no. 23 area 16 decimals, a Land Acquisition Case No. 26 of 1969-70 was initiated under the provisions of the Act, 1894 for the purposes of construction of Ganga Bridge, Buxar at village Sohanipatti, which is now a part of National Highway No. 84. It is further submitted that in the aforesaid land acquisition case notice was properly served upon the father of the petitioner namely Md. Israil Mian and the amount of award prepared in the aforesaid land acquisition case was accepted by him on 16.07.1970. It is next contended that plea taken by the petitioner in the present proceeding that no land acquisition proceeding was started after issuance of notification under Section 4(1) read with Section 6 of the Act, 1894 for acquisition of the land in question is completely wrong and false. By referring to paragraph 7 of the aforesaid counter-affidavit, he further submitted that a separate land acquisition proceeding Case No.



176/71-72 was started against Md. Israfi and Md. Ijrail for temporary acquisition of 0.05 acre only of R.S. Plot No. 45 corresponding to C.S. Plot No. 29 and not from C.S. Plot no. 45, which is claimed by the petitioner in the present proceeding. It is also contended that for acquisition of 0.05 acre of land of R.S. Plot No. 45 on temporary basis, a compensation amount was determined, but that was not accepted by the interested persons. Hence, aforesaid compensation amount was deposited in the office of Account General, Ranchi on 16.03.1973. In paragraph 12 of the aforesaid counter-affidavit, it has been asserted by the aforesaid respondents that the lands in question is not in the possession of the petitioner and the plantation over the lands in question was done by the Forest Department of the Government, which is evident from the report dated 16.4.2011, brought on record as Annexure-D to the aforesaid counter-affidavit. In paragraph-14 of the aforesaid counter-affidavit it has further been asserted that delivery of possession over the land in question for construction of Ganga Bridge Project, Buxar was given way back on 21.08.1978, and thereafter construction of Ganga Bridge over the land in question, besides other plot of lands, was completed.

5. Though a copy of the aforesaid counter-affidavit was served upon the learned counsel appearing on behalf of the petitioner way back on 14.12.2011, but despite passage of more than 4 ½ year, till date no rejoinder affidavit has been filed on behalf of the petitioner controverting the averments/ assertions made in the aforesaid counter-affidavit.

6. After having heard the learned counsel appearing on behalf of the parties and taking into consideration the pleadings of the parties, noticed above, this Court is of the opinion that entire claims raised on behalf of the petitioner with respect to the lands in

question are based on disputed question of facts. As noticed above, assertion made by the respondent State that the lands in question was acquired way back on the basis of orders passed/ notification issued in land Acquisition Case No. 26 of 1969-70, and possession was given over the same in the year 1978 have not been controverted by the petitioner.

7. In the above factual matrices, this Court does not feel persuaded to accede to the prayers made on behalf of the petitioner in the present writ petition. The writ petition seems to be devoid of merits and is, accordingly, dismissed. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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