

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13903 of 2010

=====

1. Shital Prasad Son of Ram Niranjana Prasad Jibrajika
2. Lakshmi Devi Wife of Late Murari Prasad Jibrajika (Daughter-in-law of said Ram Niranjana Prasad Jibrajika),
Both residents of village.- Araria Sangram (Tulapatganj), P.S.- Ghoghardiha, Anchal- Jhanjharpur, Distt.- Madhubani (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Land Acquisition Department, Bihar, Patna
2. The National Highway Authority of India through its Chief Manager, New Delhi
3. The Collector of District (DM), Madhubani
4. The Additional Collector-cum-Arbitrator, NH Project, Madhubani
5. The District Land Acquisition Officer, Madhubani, District.- Madhubani
6. Anwarul Haque
7. Merajul Rahman
8. Zakir Hussain

All sons of Lal Mohamad Khan, all are residents of village.- Sindaha, Mauza- Araria, P.S. Goghardiaha, Anchal- Jhanjharpur, Distt.- Madhubani

9. Nawijhan Khan S/O Late Hanif Khan (**Expunged vide order dated 05.05.2016 and substituted by his following heirs and legal representatives**)

9(a) Munna Khan (son)

9(b) Izhar Khan (son)

Resident of village Sindaha, Mauza- Araria, Sangram, P.S. Goghardiaha, Anchal- Jhanjharpur, Distt.- Madhubani

10. Md. Mohtawar Khan

11. Md. Abdul Rahman

12. Attaur Rahman

Respondent Nos. 10 to 12 are sons of Late Hanif Khan, resident of village.- Sindaha, Mauza- Araria, Sangram, P.S. Goghardiaha, Anchal- Jhanjharpur, Distt.- Madhubani

13. Sahim Khan S/O Late Sannaullah Khan (**Expunged vide order dated 05.05.2016 and substituted by his following heirs and legal representatives**)

13(a) Makira Khatoon (wife)

13(b) Idris Khan (son)

Resident of village - Sindaha, Mauza Araria, P.S. Goghardiha, Anchal- Jhanjharpur, Distt.- Madhubani

.... Respondent/s

=====

Appearance :

For the Petitioner/s

: Mr. T.N.Maitin, Sr.Advocate
Mr.Shashi Nath Jha, Advocate

For the Respondent Nos. 1 and 3 to 5: Mr. Ajay Kumar Sharma,
AC to PAAG-1

For the Respondent No. 2 : Mr.Gyan Prakash, Advocate

For the Respondent Nos. 6 to 9 : Mr Sri Nandan Prasad Singh, Advocate
Mr.Surendra Prasad Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 31-08-2016

Heard the parties.

2. The matter at issue is the payment of compensation amount determined by the competent authority in terms of Section 3G (1) of The National Highways Act, 1956 (in short, “the Act”) with respect to a parcel of land bearing C.S.Khata no. 545, appertaining to old Khesra No. 2220 corresponding to new Khesra No. 1582 area 2 kathas 11 dhurs (10 decimals) situate at Mauza Araria Sangram in the district of Madhubani (in short “land in question”).

3. It is common case of the parties that for widening/strengthening of NH No.57, a large area of lands including the land in question were acquired by the State Government, on the requisition made by the National Highways Authority of India under the provisions of the Act. It is also not in dispute that the determination of compensation amount in terms of Section 3G(1) of the Act was made by the competent authority, and the amount of compensation was fixed at Rs.13,10,211/-. Subsequently, in view of the objection raised on behalf of the petitioners, payment of compensation amount was directed to be withheld by an order/communication dated 11.02.2010/22.05.2010 issued by the respondent District Land Acquisition Officer, Madhubani, as contained in Annexure-5 to the writ petition. The private respondents, being aggrieved by the aforesaid order/communication, approached the Arbitrator-cum-Additional Collector, Madhubani in terms of Section 3G (5) of the Act, giving rise to Misc. Case No. 15 of 2010-11, who, by his impugned order dated 15.07.2010 (Annexure-7), has issued a direction for payment of compensation amount in favour of the private respondents with certain conditions, and objection raised on behalf of the petitioners has been rejected.

4. The learned senior counsel appearing on behalf of the petitioners submits that, indisputably, the land in question was



originally belonging to one Ram Niranjana Prasad Jibrajika, the father of the petitioner no.1 and father-in-law of the petitioner no.2. According to him, petitioner no.1 Shital Prasad Jibrajika @ Shital Prasad and his minor son filed Partition Suit No. 9 of 1992 seeking partition of the entire suit properties, fully detailed in Schedule 1 of the plaint. It is next submitted that the land in question is also the subject matter of consideration in the aforesaid partition suit, and the learned Sub-Judge, Madhubani, who was in seisin of the aforesaid partition suit, had passed an order of status quo with respect to the suit properties by an order dated 03.04.1992 (Annexure-1). It is highlighted that during the pendency of the aforesaid partition suit, Smt. Lalita Devi, another daughter-in-law of aforesaid Ram Niranjana Prasad Jibrajika, transferred the land in question in favour of the private respondents by executing four separate registered sale deeds dated 05.07.1994 on the ground that the land in question was gifted to her by the original landowner Ram Niranjana Prasad Jibrajika, father of petitioner no.1, by a deed of gift dated 02.05.1992. It is contended that unless and until the matter is finally adjudicated by the civil court, the aforesaid Lalita Devi could not have executed the sale deeds in favour of the private respondents, particularly, in view of the order of status quo passed by the civil court. Therefore, according to learned senior counsel, the order impugned cannot be sustained in law.

5. The learned counsel appearing on behalf of the respondent nos. 6 to 9, on the other hand, has contested the claim of the petitioners and has supported the impugned order. According to him, the land in question was self acquired property of the aforesaid Ram Niranjana Prasad Jibrajika, who gifted the land in question in favour of his daughter-in-law Lalita Devi and therefore, she, being the rightful owner of the land in question, had executed four separate sale deeds in favour of the private respondents, who came in



possession over the same and was held to be the owner of the land in question. Therefore, the amount of compensation was found payable to the private respondents. It is next submitted that since the respondent District Land Acquisition Officer, Madhubani issued an order of stay, therefore, the private respondents approached the Arbitrator-cum-Additional Collector, Madhubani, who, by his impugned order, has allowed the claim of the private respondents, which, according to him, cannot be legally faulted. He lastly submitted that in the aforesaid partition suit filed on behalf of the petitioner no.1, besides others, a compromise petition has been filed, wherein the claim of the aforesaid Lalita Devi over the land in question has been accepted.

6. The learned AC to PAAG-1, appearing on behalf of the respondent nos. 1 and 3 to 5 and the learned counsel appearing on behalf of the respondent no.2 are unanimous in their submissions that unless and until, the matter is decided by the civil court in the aforesaid pending Partition Suit, the amount of compensation may not be directed to be paid either to the petitioners or the private respondents. According to them, interest of justice shall be subserved if a direction is issued to the civil court for disposal of the aforesaid partition suit filed on behalf of the petitioner no. 1, besides others, at an early date. They also submitted that if a compromise petition has been filed by the parties, then that may be taken up and considered in accordance with law by the learned Presiding Judge, in seisin of the aforesaid partition suit.

7. After having heard the parties at great length and on consideration of the materials available on the record, this Court finds that admittedly there is serious dispute of right and title between the petitioners at one side and the private respondents on other side with respect to the land in question. The petitioners, claiming to be the



rightful owner of the land in question, besides other plots of lands, filed Partition Suit No. 9 of 1992, which is presently pending in the court of learned Sub- Judge, Jhanjharpur. This Court further finds that the private respondents claim to have derived their right and title over the land in question on the basis of the sale deeds executed in their favour by one Smt. Lalita Devi, one of the defendants of the aforesaid Partition Suit. She claims to be donee from the original landowner Ram Niranjana Prasad Jibrajika, but the validity of the deed of gift is yet to be tested in the aforesaid partition suit.

8. In above view of the matter, this Court is of considered opinion that unless and until the aforesaid partition suit is conclusively decided, amount of compensation should not be paid to either party. Accordingly, this Court directs the learned Sub Judge, Jhanjharpur, who is in seisin of the aforesaid Partition Suit No. 9 of 1992, to take up the aforesaid partition suit on priority basis and all endeavours should be made to dispose of the same at an early date. If any compromise petition has been filed by the parties in the aforesaid partition suit, then the same must be disposed of in terms of the provisions of Order 23 of the C.P.C., after giving an opportunity of hearing to both sides. If the compromise petition filed on behalf of the parties is accepted, then the aforesaid partition suit shall be disposed of to the extent of compromise. However, if the compromise is not accepted, then the partition suit would be decided on the basis of the materials/evidence produced by the parties and by looking into all other relevant materials available on the record. It is expected that the parties shall co-operate for early disposal of the aforesaid Partition Suit No. 9 of 1992.

9. Till disposal of the aforesaid Partition Suit No. 9 of 1992, the impugned order dated 15.07.2010 passed in Misc. Case No. 15 of 2010-11 by the respondent Additional Collector-cum-Arbitrator,

Madhubani, as contained in Annexure-7 to the writ petition, shall be kept in abeyance.

10. In the result, the present writ petition is finally disposed of with the observations and directions made above. No. costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.09.2016
Transmission Date	