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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2526 of 2014

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Nandmahar Kamati @ Mohan Kamti S/O Late Bisesar Kamati, grandson of Chulhai Kumati, Resident of Village Lalganj, P.O- Lohana Via Sarisab Pahi, P.S- Bhairavsthan, District-M Adhubani.

.... Petitioner/s

Versus

1. The State of Bihar, through its Chief Secretary.
2. The District Magistrate, Madhubani.
3. The Competent Authority Cum District Land Acquisition Officer, Madhubani Collectoriate, Madhubani.
4. The Circle Officer, Jhanjharpur, Madhubani.
5. Sri Chetnarayan Ray, A.C. Jhanjharpur, Madhubani.
6. The Project Manager, NHAI, Jhanjharpur, Madhubani.

.... Respondent/s

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Appearance :
For the Petitioner/s : Ms. Anju Mishra, Adv.
For the Respondent Nos. 1 to 5 : Mr. Krishna Chandra, AC to AG
For the Respondent No. 6 : Mr. S.N. Pathak, Adv.

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

Heard the parties.

2. The matter at issue is the claim of the petitioner for payment of adequate compensation for a parcel of land bearing R.S. khata no. 321 appertaining to R.S. khesra no. 1765 area 10 decimals situate at Mauza Kharakh in the district of Madhubani (hereinafter to be referred to as the land in question).

3. The petitioner has filed the present writ petition seeking a direction to the respondents for payment of adequate amount of compensation to him by treating the land in question as commercial in nature, as also for grant of other ancillary reliefs.

4. It is the common case of the parties that for widening of

the National Highway No.57, large area of lands including the land in question was acquired by the State Government under the provisions of The National Highways Act, 1956 (In short the Act). The determination of compensation for the land in question was made in terms of Section 3G(1) of the Act and the petitioner was held entitled to receive compensation amount to the extent of Rs. 7,13,083/-, which, in fact, was paid to the petitioner.

5. The grievance of the petitioner is that the building standing over the land in question was treated to be a shop and, accordingly, higher amount of compensation was paid to him, but the nature of land in question has wrongly been treated as agricultural in nature. The learned counsel appearing on behalf of the petitioner submits that since shop was standing over the land in question it ought to have been treated commercial in nature and, accordingly, adequate amount of compensation should have been paid to the petitioner. Accordingly, a direction may be issued for payment of compensation amount to the petitioner by treating the land in question as commercial in nature.

6. . Had that been the only issue, there would have been no difficulty in passing an appropriate order for redressal of grievance of the petitioner, but now, the very title of the petitioner with respect to the land in question, is questioned by the State authority. The learned AC to AG appearing on behalf of the respondent nos. 1 to 5, submits that, in fact, the land in question has been recorded as “Gairmajarua Khas” in the revenue records and the name of the father of the petitioner was wrongly recorded in the revisional survey khatiyan, though he was not the owner of the land in question. By referring to the averments made in the counter affidavit and supplementary counter-affidavit filed on behalf of the respondent nos. 2 to 5, he

further submits that for declaration of right and title of the State Government over the lands in question, Title Suit No. 63 of 2015 has been filed in the Civil Court of competent jurisdiction at Jhanjharpur, by the Circle Officer, Jhanjharpur, which is still pending before the learned Sub-Ordinate Judge-I, Jhanjharpur in which the petitioner is also impleaded as one of the defendants. According to him, unless and until the title of the petitioner is accepted in the aforesaid title suit, the prayer made on behalf of the petitioner in the present writ petition cannot be granted. He next submits that since the title of the petitioner is under cloud and the petitioner has been paid the compensation amount, therefore, by letter dated 18th April, 2015, of the respondent District Land Acquisition Officer, Madhubani a direction has been issued to the petitioner to refund the compensation amount of Rs. 7,13,089/- with 9% interest, failing which a certificate proceeding shall be started against him.

7. The learned counsel appearing on behalf of the respondent no. 6 supports the contention of the learned State counsel and submits that unless and until the issue of title is decided in the aforesaid Title suit, the claim of petitioner for higher amount of compensation cannot be considered at this stage.

8. After having heard the parties at length and on consideration of the materials available on the record, this Court finds that indisputably, the compensation amount was determined in favour of the petitioner in terms of Section 3G(1) of the Act treating him the landholder and treating the land in question as agricultural in nature, but according to the petitioner, the land in question ought to have been treated as commercial in nature, and the petitioner should have been paid the higher amount of compensation. However, according to the respondents, now, the very title of the petitioner is under dispute,

and the respondent State through its functionaries has filed Title Suit No. 63 of 2015, which is still pending in the court of the learned Sub-Judge-1st, Jhanjharpur. This Court also finds that though the amount of compensation, so determined, was paid to the petitioner, but during the pendency of the aforesaid title suit, by order/ communication dated 18th April, 2015 a direction has been issued to the petitioner for refund of the compensation amount paid to him. In the considered opinion of this Court, unless and until the title of the State of Bihar is declared over the lands in question and it is held that the petitioner or his father was/is not the rightful owner of the same, the order/ communication dated 18th April, 2015, brought on record as Annexure-1 to the rejoinder affidavit filed on behalf of the petitioner, cannot be sustained.

9. For the reasons recorded above, the order/ communication dated 18th April, 2015 issued by the respondent District Land Acquisition Officer, Madhubani directing the petitioner to refund the compensation amount already paid to him with interest is hereby set aside and quashed. The petitioner and the respondent no.4, besides others, are hereby directed to appear in the aforesaid Title Suit No. 63 of 2015 and shall complete their pleadings at earliest, if not already completed, whereafter the aforesaid Title Suit No. 63 of 2015 shall be taken up on priority basis by the learned Presiding Officer of the Civil Court, Jhanjharpur and the learned Presiding Officer, in seisin of that suit, shall make all endeavours to dispose of the aforesaid title suit at earliest and no unnecessary adjournment shall be granted either to the plaintiff or to the defendants of that suit. If the aforesaid title suit is dismissed, then the claim of the petitioner for payment of higher amount of compensation shall be considered by the competent authority afresh in accordance

with law. However, if the aforesaid title suit is decreed, then in that case the petitioner would be obliged to refund the compensation amount already received by him with interest.

10. It is clarified that the parties shall be at liberty to raise all the issues of facts and law, which may be available to them with respect to the land in question in the aforesaid pending title suit regarding their right, title and possession over the same.

11. The writ petition stands finally disposed of with the observations and directions made above.

(Birendra Prasad Verma, J)

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