

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2906 of 2013

With

Interlocutory Application No.3571 of 2016

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1. Fagu Prasad @ Fagu Prasad Shah, S/O Late Moti Shah,
2. Anup Kumar Gupta,
3. Rajesh Kumar Gupta
Both sons of Fagu Prasad @ Fagu Prasad Shah
All R/O Vill-Chausa (Bechanpurwa) Block Chausa, P.S.-Buxar(M), Distt-
Buxar, Present Address Bazar Samiti Road, Gajadharganj, Buxar

.... Petitioner/s

Versus

1. The Bihar State Electricity Board Bihar State Power (Holding) Company Limited Vidyut Bhawan, Patna, Through The Chief Executive Engineer Project&Design, Patna
2. The Executive Engineer Project &Design, Patna, Bihar State Electricity Board State Power (Holding) Company Limited Vidyut Bhawan, Patna
3. The Requisitioning Authority, Executive Engineer, Project &Design, Bihar State Electricity Board, State Power Holding Company Ltd, Vidyut Bhawan, Patna, Bihar
4. The District Land Acquisition Officer, Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Fakhruddin Ali Ahmad, Adv.
Mr. Anjum Perween, Adv.
For the Respondent nos.1to3 : Mr. Vinay Kirti Singh, Adv.
For the Respondent no.4 : Mr. Ajay Kumar Sharma, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

14 27-04-2016

Heard the parties.

The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 28.12.2012 passed in Case No.1/12, by the respondent District Land Acquisition Officer, Buxar, as contained in Annexure-3, whereby the petition filed on behalf of the petitioners for restraining the State of Bihar and its functionaries from withdrawing from the acquisition of the lands in question belonging to the petitioners has been rejected for the



reasons recorded in that order. The petitioners have, now, filed I.A.No. 3571 of 2016 for quashing the notification dated 20.04.2016 issued by the State Government under Section 93(1) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (in short Act 2013), whereby out of total 25.57 acres of lands proposed to be acquired, 6.84 acres of lands have been released from the land acquisition proceeding, details of which have been given in that notification itself, which has been brought on record as Annexure-5 to the aforesaid Interlocutory Application.

Learned counsel appearing on behalf of the petitioners submits that, in fact, a notification under Section 4 read with Section 17(4) of The Land Acquisition Act, 1894 (in short 'Act, 1894) was earlier issued on 19.05.2011, as contained in Annexure-1 to the writ petition. According to him, after issuance of the aforesaid notification, possession over the lands in question, belonging to the petitioners, was taken by the State authorities, which is evident from the order dated 17.04.2012 (Annexure-2) passed by the respondent District Land Acquisition Officer, Buxar. It is contended that even if the State Government wanted to withdraw from the acquisition of the lands in question and/or wanted to release some acquired land including the lands belonging to the petitioners, then, in that case also, the petitioners were entitled to receive compensation determined by the Collector either under Section 48(2) of the Act, 1894 or under Section 93(2) of the Act, 2013, but that has not been done in present case.

The learned counsel appearing on behalf of the respondents, on the other hand, submits that it is true that the notification under Section 4 read with Section 17(4) of the Act,



1894 was issued on 19.05.2011 (Annexure-1) for acquiring altogether 27.23 acres of land, but possession over the same was never taken. According to them, subsequently it was realized that the entire area of 27.23 acres of lands, which were subject matter of acquisition, were not required to be acquired. Therefore, it was resolved that 6.84 acres of lands be released in favour of the original land owners. It is contended that if the State Government does not want to acquire any particular plot of land, then no land owner can compel the State Government to acquire that particular plot of land, particularly in the background when award has not been prepared under Section 11 of Act, 1894.

After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that if the State Government does not want to acquire the lands in question belonging to the petitioners, then it cannot be compelled to acquire such lands. Admittedly, no material has been produced by the petitioners that an award under Section 11 of the Act, 1894 was prepared even with respect to the lands in question belonging to the petitioners. In that background, this Court does not find any good ground to interfere with the impugned order dated 28.12.2012 passed in Case No.1/12, by the respondent District Land Acquisition Officer, Buxar, as contained in Annexure-3. However, this Court is of the opinion that once a notification under Section 4 read with Section 17(4) of the Act, 1894 was issued way back on 19.05.2011 (Annexure-1) and once an order was passed by the respondent District Land Acquisition Officer, Buxar on 17.04.2012 (Annexure-2), then while issuing the notification either under Section 48(1) of the Act, 1894 or under Section 93(1) of the Act, 2013 the Collector was/is required to



make determination of the amount of compensation payable to the land owners due to damages suffered by them on account of the proceeding initiated and action taken for acquisition of the lands in question. Evidently, that has not been done in the present case. This Court further finds that for releasing the lands in question, a notification under Section 48(1) of the Act, 1894 was not issued rather a notification has been issued as late as on 20.04.2016 under Section 93(1) of the Act, 2013. Under Section 93(2) of the Act, 2013 also, determination is required to be made by the Collector about the amount of compensation payable to the owner of the land for the damages sustained by him/her, but that has not been done in the present case.

For the reasons recorded above, the writ petition as also I.A. No.3571 of 2016 are hereby disposed of with a direction to the Collector under the Act, 2013 to determine the amount of compensation payable to the petitioners under Section 93(2) of the Act, 2013 for the damages, if any, sustained by them in view of initiation of the land acquisition proceeding and consequential action(s) taken under the provisions of the Act, 1894. However, so far notification releasing the lands in question from the land acquisition proceeding is concerned, this Court is not inclined to interfere with the impugned notification dated 20.04.2016 (Annexure-5).

In order to expedite the matter, the petitioners are directed to appear before the District Collector, Buxar within a period of one month from today with a certified copy of the present order as also with other relevant materials in support of their respective claims for payment of compensation amount on account of damages allegedly sustained by them. On their

appearance, the District Collector, Buxar shall proceed to decide their claims in terms of Section 93(2) of the Act, 2013, but, before passing any final order, an opportunity of hearing must be given to all concerned including the respondents herein.

It is clarified that, if on consideration of the materials, the District Collector, Buxar comes to a conclusion that the petitioners are entitled for payment of certain amount of compensation on account of damages sustained by them, the amount, so determined by him, shall be paid to them without any unnecessary further delay.

Consequently, the writ petition stands finally disposed of with the observations and directions made above. I.A.No.3571 of 2016 also stands accordingly disposed of.

(Birendra Prasad Verma, J)

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