

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.715 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 10633 of 2013
Along with
Interlocutory Application No.3015 of 2015

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1. Smt. Dharamsheela Devi, wife of Sri Nagina Prasad, resident at Mamrakhabad, P.O. & P.S.- Pandarak, Barh, District- Patna.
 2. Sri Narsingh Prasad, S/o Late Tunna Rai, resident at village- Gopkita, P.O. & P.S.- Pandarak, Barh, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar.
2. Union of India through the Secretary Energy, New Delhi.
3. The Secretary, Revenue and Land reforms Department, Bihar, Patna.
4. The Patna Collector, Patna District.
5. The District Land Acquisition Officer, Patna.
6. The Chief General Manager, East Zone, N.T.P.C., Patna, Bihar.
7. The General Manager, N.T.P.C., Barh, Patna.

.... Respondent/s

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Appearance :

For the Appellants : Mr. Rajive Ranjan, Advocate

For the Respondents-State : Mr. Prabhu Narayan Sharma, A.C. to A.G.

For the respondents NTPC : Mr. Anil Kumar Sinha, Advocate
Mr. Abhimanyu Deo, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 20-07-2016

Re.: Interlocutory Application No.3015 of 2015

The application is for condonation of delay of 92 days in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters

Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.715 of 2015

The order dated 22nd of October, 2014 passed by the learned Single Bench of this Court is subject matter of challenge in the present Letters Patent Appeal.

2. The appellant claims enhanced compensation in terms of Bihar Land Acquisition, Re-establishment and Rehabilitation Scheme, 2007 published on 19th February, 2007.

3. A large chunk of land was acquired on different dates for National Thermal Power Corporation for the establishment of Power Generating Unit. The land of the appellants became subject matter of a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') on 1st of June, 2006 which was issued by invoking urgency provision under Section 17(4) of the Act. The Notification under Section 6 of the Act was published on 6th of June, 2006. Thereafter, notice under Section 9 of the Act was issued on 23rd October, 2006. After enquiry, the Land Acquisition Collector assessed the amount of compensation at Rs.2.65 lacs per acre on 19th of January, 2007 as per the records produced before the Learned Single Judge. The appellants were given notice on 22nd January, 2007 to receive 80 per cent amount of estimated amount of compensation on

29th of January, 2007. On payment of such amount, the possession of the land was handed over on 31st January, 2007.

4. It was on 19th of February, 2007, the Government of Bihar notified a new Scheme called “Bihar Land Acquisition, Re-establishment and Rehabilitation Scheme, 2007”. The appellants were issued notice on 20th of July, 2010 to receive the remaining amount of compensation. Such amount was disbursed after the award was prepared on 20th of July, 2010.

5. The argument of learned counsel for the appellants before the learned Single Bench was that since the award has been announced after 19th of February, 2007, therefore, the appellants are entitled to enhanced compensation in terms of the Scheme notified. It is the said claim which was not accepted by the learned Single Bench, *inter alia*, on the ground that the Land Acquisition Collector has prepared an award under Section 11 of the Act on 20th of January, 2007 containing all the ingredients required for preparation of the award, such as, names of the land holder, nature of the land, area of the land and value of the land, including the interest and *solatium* including an amount of 80 percent compensation as well. It is thereafter, the Collector issued notice on 22nd January, 2007 asking the parties to receive the amount of compensation on 29th January, 2007. After payment, possession has been handed over on 31st January, 2007.

Consequently, the learned Single Judge dismissed the writ petition.

6. Before this Court, the argument of learned counsel for the appellants is that payment of 80% of the amount of compensation is not in terms of the award, therefore, 2007 Scheme would be applicable as the award was announced only on 20th of July, 2010.

7. On the other hand, learned counsel for the respondents argued that the Land Acquisition Collector has completed the proceedings for announcement of the award on 20th of January, 2007 and issued notice for payment of 80% of the amount of compensation in terms of Section 17 (3-B) of the Act. Such amount was paid as well and the possession taken. All the steps were taken prior to enforcement of the new Policy. Subsequently, it was clarified by the State Government on 23rd May, 2007, that in cases, where 80% of the compensation as per the award has been paid and possession taken prior to the issuance of the policy on 19th of February, 2007, then the new Policy will not be applicable.

8. To examine the respective contentions of the parties, certain statutory provisions need to be extracted:

“11 **Enquiry and award by Collector.** -(1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value

of the land at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.]

Section 17 (3-A) of the Act.

“17(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.”

9. The relevant extract from the Bihar Land

Acquisition, Re-establishment and Rehabilitation Scheme 2007 dated 19th February, 2007, when translated into English reads as under:-

“5. The policy would be applicable to all those cases, in which an Award under Section 11 has not been issued.

The State Government will review the working of scheme and issue clarifications from time to time.”

10. Subsequently, the State Government issued clarification on 23rd May, 2007 to the following effect:-

“3. If before issuance of Bihar Land Acquisition, Re-establishment and Rehabilitation Scheme, 2007 dated 19th February, 2007, 80 per cent of the amount of compensation has been paid after preparation of the award, and the acquiring department has been handed over the possession, then the revised policy would not be applicable.”

11. A perusal of the order passed by the learned Single Bench shows that the award was prepared by the Land Acquisition Collector as required under sub-section (1) of Section 11 of the Act, therefore, the Land Acquisition Collector disbursed 80 % of the compensation amount for such land as estimated by him. We find that payment of such 80% of the compensation amount is in terms of sub-section (3-A) of Section 17 of the Act. We also find that the formally award could not be announced for the reason that the approval of the State Government as required under the proviso to sub-section (1) of

Section 11 was awaited,

12. Though the original Policy dated 19th February, 2007 is capable of interpretation that 80% of the compensation is not an amount paid in pursuance of an award, therefore, such policy would be applicable, but the issue has been set at rest, when the clarification was issued on 23rd May, 2007 by the State Government that the benefit of the revised policy would not be applicable if 80% of the amount of the award has been paid and the possession delivered. Payment of 80% of the compensation is related only to the estimated amount of compensation contemplated under sub-section (3A) of Section 17 of the Act. Since the State Government has issued Circular dated 19th of February, 2007 and also issued Circular dated 23rd of May, 2007, therefore, the subsequent clarification cannot be ignored.

13. Therefore, the appellant would not be entitled to benefit of 2007 policy after the payment of the 80% of the compensation amount to the appellant, the possession was delivered to the acquiring Department before the publication of the Scheme on 19th February, 2007.

14. Learned counsel for the appellants has referred to a Single Bench order passed in CWJC No.12595 of 2011 (Mahboob Azim & Anr. Versus The State of Bihar & Ors.) dated 21st of November, 2011 wherein, a direction was issued to consider the claim

of the petitioners therein for payment of compensation in terms of the Rehabilitation Policy of 2007. It is thereafter the Collector passed an order declaring the claim of the land owners which order became subject matter of challenge in CWJC No.8291 of 2013 (Mahboob Azim & Anr. Versus The State of Bihar & Ors.). In the aforesaid case, an award was announced on 20th February, 2009. Therefore, it was prepared under the new Scheme and thus, the land owners have been rightly found entitled to benefit of enhanced compensation. But in the present case, 80% of the compensation amount was paid and the possession delivered before the commencement of the Scheme and therefore, the new Scheme, as explained by the State Government, will not be applicable in respect of the lands of the appellants.

15. In view thereof, we do not find any merit in the present appeal and the same is dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	
CAV DATE	N. A.
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