

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4710 of 2013

=====

Rajeshwar Prasad @ Netaji S/O Late Bhujawan Prasad, Resident of Village Bagmusha, P.S. Hajipur Nagar, District Vaishali.

.... Petitioner

Versus

1. The Union of India through the Principal Secretary, Ministry of Railways, New Delhi.
2. The Chairman, Railway Board, Government of India, New Delhi.
3. The General Manager, East Central Railway, Hajipur.
4. The Divisional Railway Manager, East Central Railway, Sonapur (Bihar).
5. The Divisional Engineer (Special), East Central Railway, Sonapur (Bihar).
6. The Divisional Railway Manager (Engineering), East Central Railway, Sonapur (Bihar).
7. The Assistant Security Commissioner, East Central Railway, Sonapur (Bihar).
8. The Assistant Engineer, East Central Railway, Sonapur (Bihar).

.... Respondents

=====

Appearance:

For the Petitioner	:	Mr. Pradeep Kumar Sinha. Ms. Punam Srivastava, Mr. R.K.Jain, Advocates
For the Resp. Railway	:	Mr. Sidharth Prasad, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 08-08-2016

Heard learned counsel for the petitioner and learned counsel for the respondent Railway.

2. This writ petition has been filed claiming compensation for the financial loss caused to him on account of the respondents having dispossessed him from the pond allotted in his favour by the respondents in the year 2005 inspite of payment of the first instalment of Rs. 1,01,667/- for the period with effect from 01.04.2005 to 31.03.2006 , as well as due to the wrong decision of the respondents in filling soil in the pond after giving possession of the pond with effect from 20.02.2007 which resulted in the fish dying.

3. It transpires from the order dated 25.04.2016 passed by

this Court that the petitioner had confined his prayer only to the extent that he may either be allowed to operate the pond for two years upon deposit of the balance instalments, or alternatively, the instalments already deposited pursuant to the order of the Division Bench of this Court be refunded with suitable interest.

4. Learned counsel for the petitioner submits that it is an admitted position that there was considerable delay in giving possession of the pond to the petitioner even after the first instalment of Rs. 1,01,667/- was deposited on 01.12.2005 and such possession was granted only in the year 2007 which the petitioner enjoyed upto 31.03.2009. Thereafter it appears that owing to an erroneous decision on the part of the respondents, the pond was filled up with soil causing the fish of the petitioner to die. It is further stated that pursuant to the order of the Division Bench of this Court dated 27.07.2012 passed in LPA No. 1006 of 2012 (Annexure-17) and in the light of joint report dated 09.02.2012 (Annexure-A to the counter affidavit), the petitioner deposited two Demand Drafts bearing No.001345 dated 09.07.2016 and No.001384 dated 11.07.2012 for Rs. 50,834/- each, both drawn on IDBI Bank. The petitioner was however still not granted possession of the pond and therefore, claims that the said two Demand Drafts of Rs. 50,834/- each may be refunded together with reasonable interest.

5. Learned counsel for the respondent Railway is present with the two Demand Drafts of Rs. 50,834/- each in original which are handed over to learned counsel for the petitioner in Court, who has



accepted the same. As regards payment of interest however, it is submitted that the petitioner is not entitled to any interest considering that in terms of the order dated 27.07.2012 passed by the Division Bench of this Court (Annexure-17), the petitioner was required to deposit the two due instalments upon which the authorities would consider extension of the term of settlement till March, 2013. It is pointed out that in view of the re-calculation of the area of the pond in terms of the Railway's letter dated 27.07.2011 (Annexure-B to the counter affidavit), the petitioner was required to deposit an amount of Rs. 2,03,334/- for extension upto the period 31.12.2012, but however, the petitioner has deposited only Rs. 1,01,668/- through the aforesaid two Demand Drafts of Rs. 50,834/- each. It is further stated that inasmuch as the Demand Drafts had not been issued in the proper name, the same could not be encashed and the same was sought to be returned to the petitioner through letter dated 09.08.2002 which was however refused to be accepted by the petitioner. It is stated that the respondent Railway was therefore neither able to encash the Demand Drafts, nor utilise the fund which has remained idle in the form of the original Bank Drafts.

6. In reply, learned counsel for the petitioner states that he has suffered considerable loss at the hands of the Railway. The Demand Drafts in question were made bona fide in the name of Mandal Rail Prabhandak (Engineering), Sonapur, in view of the letter dated 12.03.2012 issued by the said authority. Besides, a huge loss was

incurred by the petitioner also by reason of the erroneous decision of the railway to fill up the pond killing the fish.

7. The original two Demand Drafts of Rs. 50,834/- and Rs. 50,834/- have been handed over by learned counsel for the Railway and duly accepted by learned counsel for the petitioner, and the dispute between the parties with regard to the settlement of Jalkar thus stands resolved.

8. Considering that the petitioner has suffered considerable losses and delays at various stages as also that the two Demand Drafts appear to have been made in the name of Mandal Rail Prabhandak (Engineering), Sonapur by reason of a bona fide mistake, in the interest of justice and with a view to balancing the equities between the parties, this Court directs the respondent Railway to pay simple interest calculated @ 6% per annum on the aggregate amount of the the two Demand Drafts, viz., Rs. 1,01,668/- (Rs. 50,834/- + Rs. 50,834/-) from the respective dates of issuance of the Demand Drafts upto today when the Demand Drafts have been handed over to the petitioner.

9. The writ petition stands disposed of.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	12.08.2016
Transmission Date	N.A.