

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19051 of 2012

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1. Rajendra Pathak son of Late Rameshwar Pathak,
2. Rishikesh Pathak son of Rajendra Pathak,
Both resident of Village-Paprou, P.S.- Barauni, District -Begusarai
..... Petitioners

Versus

1. The State of Bihar through the District Magistrate-cum-Collector, Begusarai
2. The Certificate Officer, Begusarai
3. The Bihar Industrial Area Development Authority through its Managing Director, Udyog Bhawan, East Gandhi Maidan, Patna
4. The Executive Director, Bihar Industrial Area Development Authority Regional Office, Darbhanga
..... Respondents

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Appearance :

For the Petitioners : Mr. Gautam Kejriwal,
Mrs. Aishwarya Priti, Advocates.
For the Respondents : Mr. Kamlesh Prasad Yadav, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-09-2016

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The present writ petition has been filed for quashing the notice of demand dated 29.06.2012 vide memo no. 47/29.06.2012 issued by the Certificate Officer, Begusarai upon the requisition dated 27.06.2012 filed by the Bihar Industrial Area Development Authority (hereinafter "BIADA") for the purpose of recovery of compensation amount and other incidental expenses to the tune of Rs. 9,65,480/- in Certificate Case No. 124/2007-08.; and for connected reliefs.

3. The petitioners were the co-sharers of the ancestral land bearing Khesra No. 952, 923 and 975 situated at Mauza Asurari and Khesra No. 158, and 61 situated at Mauza Paprou at Begusarai. The said lands came to be acquired for the purpose of establishment of industrial

growth centre at Barauni at the instance of BIADA. In terms of two awards bearing nos. 544 and 482 passed by the District Land Acquisition Officer, Begusarai in Land Acquisition Case No. 2/3-1995-96, the petitioners were found entitled to compensation on account of such acquisition. The compensation of Rs. 9,65,480/- received inclusive of various costs, was however subsequently sought to be recovered through certificate proceedings.

4. Learned counsel for the petitioners submits that the entire recovery proceeding is wholly arbitrary and without jurisdiction inasmuch as the nature of the amount sought to be recovered by resort to the Bihar & Orissa Public Demands Recovery Act (for short, "the Act") is not covered within the meaning of 'public demand' as defined under Section 3(6) of the said Act, nor covered by any of the entries under Schedule-I to the said Act. It is stated that the petitioners have not executed any agreement in order to submit to the jurisdiction of the Act for recovery and hence the initiation of certificate proceedings for recovery through certificate case is wholly un-authorized in law.

5. Learned counsel for the respondents relies on the counter affidavit to oppose the writ petition. However, he has not been able to point out any material nor advance any convincing submission to controvert the specific objection of the petitioners with regard to the petitioners not having agreed for recovery under the Act, and the nature of the amount sought to be recovered thus not being in the nature of a 'public demand'.

6. Having heard the parties and on careful consideration of

the materials on record, this Court finds merit in the writ petition. Before any amount may be recovered under the Act, the same must come within the sweep of ‘public demand’ as defined under Section 3(6) of the Act, which in turn refers to any arrear of money mentioned or referred to in Schedule-I. It is rightly contended on behalf of the petitioners that, if at all, Article 15 of Schedule-I may be attracted to cover amounts of the present nature, the pre-condition for the same being a written agreement by the person liable for its recovery as a public demand. In the present case, the respondents have not been able to bring on record any material to disclose such agreement on the part of the petitioner in order to justify recovery under the Act.

7. In the above view of the matter, the impugned notice of demand issued vide memo no. 47/29.06.2012 by the Certificate Officer, Begusarai, in Certificate Case No. 124/ 2007-08 is hereby quashed and the writ petition is allowed.

8. It is however made clear that the present judgment shall not stand in the way of the respondents taking recourse to such other measures as may be available to them for recovery of the amount in question in accordance with law, if the same be found to be otherwise recoverable from the petitioner.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.10.2016
Transmission Date	N.A.