

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3575 of 2014

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1. Abhishekh Kumar S/O Shri Ramesh Kunwar
2. Pankaj Kumar S/O Late Ram Naresh Kunwar
3. Kamhaiya Kumar S/O Shri Kinesh Kunwar
4. Kiran Devi W/O Late Chandra Shekhar Kunwar
5. Rita Devi W/O Shri Ratneshwar Kunwar
All Resident Of Village – Mahamadpur Gautam, P.O. - Rampur Matihani, P.S. –
Naya Gaon, District - Begusarai, Bihar

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and
Land Reforms, Government of Bihar, Patna
2. Director, Directorate of Land Acquisition, Department of Revenue and Land
Reforms, Government of Bihar, Patna
3. Commissioner, Begusarai
4. Collector, Begusarai, Bihar
5. District Land Acquisition Officer, Begusarai, Bihar
6. Circle Officer, Matihani, Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yashraj Bardhan, Adv.

For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 09-11-2016

Heard the parties.

The petitioners, five in number, have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the Notification No. 841 dated 14.3.2013, as contained in Annexure-1 to the writ petition, whereby the State Government has issued the aforesaid notification under Section 4 read with Section 17(4) of The Land Acquisition Act, 1894 (in short ‘Act, 1894’) for the purposes of acquisition of 5.46 acres of lands, detailed in the aforesaid notification, for the public purposes. The petitioners have also assailed the validity and correctness of the notification dated 18.3.2013 issued by the State Government, as contained in Annexure-

2 to the writ petition, whereby for acquisition of the lands in question, the declaration has been made under Section 6 of the Act, 1894.

The learned counsel appearing on behalf of the petitioners submits that the State Government was not justified in invoking the emergency clause under Section 17(4) of the Act, 1894 for the purposes of acquisition of the lands in question. According to him, by invoking the emergency clause under Section 17(4) of the Act, 1894, the valuable rights of the petitioners under Section 5A of the Act, 1894 have been taken up. Therefore, according to him, entire land acquisition proceeding is fit to be quashed by this Court. However, in response to the query of the Court, he has fairly conceded that the award for acquisition of the lands in question has already been prepared on 18.10.2013 under the provisions of the Act, 1894. He next contended that earlier also some other land acquisition proceeding was started for acquiring some other lands belonging to the petitioners; therefore, the present land acquisition proceeding started by the State Government was not sustainable, and the entire land acquisition proceeding and the consequential order/ award are fit to be set aside by this Court.

The matter has been contested by the respondents by filing a counter-affidavit on behalf of the respondent nos. 4 to 6. The learned AC to AG appearing on behalf of the respondents, by referring to the averments made in the aforesaid counter-affidavit, submits that after following all the procedures prescribed under the Act, 1894, an award was prepared on 18.10.2013 under Section 11 of the Act, 1894 and the notice under Section 12(2) of the Act, 1894 was issued to the interested persons. A copy of the award dated 18.10.2013 has been brought on the record as Annexure-D to the aforesaid counter-affidavit. It is contended by him that possession over the lands in

question was taken on 26.11.2013 and parchas were distributed amongst displaced persons, prior to the order dated 13.3.2014 passed by this Court, but none of the settlees have been impleaded as party respondents in the present proceeding. Therefore, according to him, the writ petition suffers from non-joinder of necessary parties and is fit to be dismissed on that ground also, besides on merits.

After having heard the parties and taking into consideration the materials available on the record, this Court finds that at least five facts are not under dispute. Firstly, notification under Section 4 read with Section 17(4) of the Act, 1894 was issued on 14.3.2013 (Annexure-2). Secondly, after conclusion of the proceeding award was prepared on 18.10.2013 under the provisions of the Act, 1894. Thirdly, the lands so acquired have already been distributed amongst the displaced persons, but none of them have been impleaded as party respondents in the present proceeding. Fourthly, in the whole writ petition as also in the rejoinder affidavit it has nowhere been stated that which plots of the lands, which were the subject matter of the acquisition proceedings, belong to these petitioners. Fifthly, the land acquisition proceeding was completed way back on 28.10.2013, but the present writ petition was filed thereafter on 13.2.2014 i.e. after completion of entire land acquisition proceeding and preparation of award.

The law has been well settled by the Hon'ble Apex Court in the cases of **State of Rajasthan v. D.R. Laxmi** [(1996)6 SCC 445, (para-9)] and **Municipal Council, Ahmednagar v. Shah Hyder Beig** [(2000)2 SCC 48, (paragraphs 17 and 20)] that once all steps taken in the land, acquisition proceeding have become final, the Court should be loathe to quash the notifications issued by the State Government with respect to such land acquisition proceeding. In the

present case not only the award has been prepared and possession over the lands in question was taken prior to filing of the writ petition, but third party right has also been created by distributing the acquired land amongst the displaced persons, but none of them have been impleaded as party respondents in the present proceeding. Obviously, the writ petition suffers from non- joinder of necessary party.

Indisputably, when the acquisition proceeding was still pending, the petitioners did not challenge those notifications issued either under Section 4 or Section 6 of the Act, 1894 and waited for final preparation of award under the provisions of the Act, 1894 and, in fact, the present writ petition was filed on 13.2.2014 when every thing was completed.

In above view of the matter, as also in view of the law laid down by the Hon'ble Supreme Court in the cases of **State of Rajasthan v. D.R. Laxmi** (supra) and **Municipal Council, Ahmednagar v. Shah Hyder Beig** (supra), this Court is not inclined to accede to the prayer made on behalf of the petitioners in the present writ petition. The writ petition is devoid of merits and is, accordingly, dismissed, but without costs.

(Birendra Prasad Verma, J)

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CAV DATE	
Uploading Date	15.11.2016
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