

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.219 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 2118 of 2013**

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1. The State of Bihar
 2. The Secretary, Revenue and Land Reforms Department, Land Acquisition Directorate, Government of Bihar, Patna
 3. The Secretary, Building Construction Department, Construction Division, Patna
 4. The Collector, Darbhanga
 5. The District Land Acquisition Officer, Darbhanga

.... Appellants

Versus

Himanshu Chandra Chaudhary, Son of Late Avanish Chandra Choudhary, Resident of Village Nehra, P.S. Manigachhi, District Darbhanga

.... Respondent

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Appearance :

For the Appellants : Mr. Harishankar Roy, A.C. to P.A.A.G.

For the Respondent : Mr. Kripa Nand Jha, 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: 21-06-2016

The State is in appeal aggrieved against the order of the learned Single Bench passed on 2nd of July, 2013 in C.W.J.C. No. 2118 of 2013, whereby the writ application was allowed and the notification under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”) after invoking of urgency provisions of Section 17 of the Act were set aside.

2. The writ-petitioner claims to be in possession of about 2 acres of land as owner. A notification dated 6th of January, 2011 was published under Section 4 of the Act in respect of

acquisition of 5.62 acres of land for public purpose, namely, for construction of Sub-divisional Office, Biraul and for the residence of the Government employees of the said Sub-division.

3. The learned Single Bench noticed that the proposal for acquisition was first made on 6th of July, 2001 which was rejected and alternative proposal was made on 24th of August, 2006. Ultimately, a proposal was made in the year 2007-08 for acquisition of 5.62 acres of land pursuant to which notification was issued under Section 4 of the Act in January, 2011. The fact that the proposal for acquisition was initiated in the year 2008 is evident from Annexure-A to the counter affidavit filed in the writ application.

4. The learned Single Bench has rightly set aside the invocation of urgency provisions, *inter alia*, for the reason that if the proposal was initiated for acquisition of the land in the year 2008 then, the State Government could very well comply with the provisions of Section 5-A of the Act to grant opportunity of hearing to the land owner against the proposed acquisition in the year 2011. By invoking the urgency provisions even though the proposal was pending for sufficient long period is indicative of the fact that there was no real urgency and the urgency provisions have been invoked so as to deprive the land owners of their right to file objection against the proposed acquisition.



5. We do not find any error in the findings recorded by the learned Single Bench in respect of the finding that invocation of urgency provisions is vitiated. The proposal for the acquisition of land was approved in the year 2008. The notification under Section 4 of the Act was published in the year 2011. If the State Government can take three years before publication of the notification intending to acquire land, then the State should have granted an opportunity to the land owners to file objections. Even the purpose of the acquisition is not such which warrants immediate action.

6. It may be noticed that the learned Single Bench noticed that the receipt of the amount of compensation by the other land owners will not affect the right of the writ-petitioner. Such finding is controverted by the learned counsel for the appellants relying upon a Supreme Court judgment reported as Anand Singh and another Vs. State of Uttar Pradesh and others, (2010) 11 SCC 242 wherein the supreme Court has not granted any relief to the landowner who has not received the amount of compensation.

7. We do not find that such judgment provides any assistance to the argument raised by the learned counsel for the appellants. In the aforesaid case, out of the 400 land owners more than 370 land owners have received the amount of compensation. Since large number of land owners have received the amount of

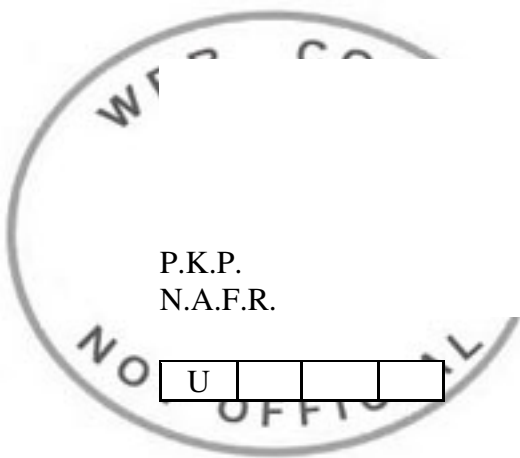


compensation and even the development works to the extent of 60 per cent was complete, therefore, the Court did not grant relief to the landowners who have not accepted the compensation. As against 5.62 acres of land intended to be acquired, almost two acres of land is owned by the writ-petitioner who has not received the amount of compensation. Since substantial portion of the land, which is intended to be acquired, belongs to the writ-petitioner, therefore, the receipt of compensation by the other land owners will not deprive the writ-petitioner of his right to dispute the invocation of urgency provisions.

Having said so, we find that the learned Single Bench erred in law in quashing the notification under Section 4 of the Act as well. The acquisition of land is for a public purpose i.e. construction of Sub-divisional Office. It is invocation of urgency provisions alone which are unsustainable.

8. Consequently, we allow the present Letters Patent Appeal partly and set aside the order of the learned Single Bench whereby the notification under Section 6 of the Act was also quashed. Consequently, the State shall give opportunity of hearing to the land owners and then publish notification under Section 6 of the Land Acquisition Act, 1894 in accordance with law. Such course is permissible in terms of Section 24(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation

and Resettlement Act, 2013.



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(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)