

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10294 of 2013

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Suresh Chandra Pd. Sinha Son Of Late Umesh Chandra Pd. Sinha, Resident of
Dighi Kalan, Police Station Hajipur, Sadar, District Vaishali

.... Petitioner/s

Versus

1. The State of Bihar through D.M., Vaishali At Hajipur
2. The District Magistrate-Cum-Collector, Vaishali At Hajipur
3. The Land Acquisition Officer, Vaishali At Hajipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manojeshwar Pd. Sinha
 Mr. Rajendra Kishore Prasad
 Mr. Ratan Kumar Sinha
 Mr. Madhukar Pandey

For the Respondent/s : Mr. Krishna Chandra, AC to AG

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 18-03-2016

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity, correctness and propriety of the notification dated 29.11.2011 issued under Section 4 read with Section 17(4) of The Land Acquisition Act, 1894 (In short 'Act, 1894'), which was published in the daily Hindi Newspaper *Prabhat Khabar* on 10.12.2011, as contained in Annexure-1 to the writ petition, as also the notice dated 17.09.2012 issued under Section 12(2) of the Act, 1894 by the respondent District Land Acquisition Officer, Vaishali, as contained in Annexure-6 to the writ petition, whereby and whereunder the four dead persons including deceased father of the petitioner have been called upon to receive 80% award amount with respect to a parcel of land bearing khata no. 1226, Khesra No. 4054 (part) area 64 decimals situate at

Mauza Dighi Kalan, Police Station Hajipur, District Vaishali (hereinafter to be referred to as 'the lands in question'). He has also prayed for consequential reliefs, which have been indicated in paragraph-1 of the writ petition.

3. It is not in dispute that a notification dated 29.11.2011 was issued under Section 4 read with Section 17(4) of the Act, 1894 for acquisition of about 30 bigha 10 kathas and 8 dhurs of lands situate at Mauza Dighi Kalan, Police Station Hajipur, District Vaishali for the purposes of construction of sewerage treatment plant. The land purported to be acquired includes the lands in question. The aforesaid notification was published in Hindi Daily Newspaper "Prabhat Khabar" in its edition dated 10.12.2011, which has been brought on record as Annexure-1 to the writ petition. It is also not in dispute that a declaration under Section 6 of the Act, 1894 was made on 05.12.2011, which has been brought on record by the respondents in their counter-affidavit as Annexure-A/1.

4. It is the case of the petitioner that once he came to know that a notification under Section 4 of the Act, 1894 has been published for the purposes of acquisition of the lands in question, besides other plots of land, then he filed an objection on 03.02.2012, which has been brought on record as Annexure-2 to the writ petition, wherein an objection was taken by the petitioner that notification dated 29.11.2011 has been issued in the name of four dead persons viz late Haridwar Prasad Singh, late Jagdish Prasad Singh, late Hari Shankar Prasad Singh and late Umesh Chandra Prasad Singh. Therefore, it was pleaded that since the notification has been issued in the name of dead persons, hence it is void and illegal. A prayer was made that the lands in question belonging to the petitioner may not be acquired.

5. It is specific case of the petitioner that the lands in



question was originally recorded in the names of aforesaid four persons, namely, late Haridwar Prasad Singh, late Jagdish Prasad Singh, late Hari Shankar Prasad Singh and late Umesh Chandra Prasad Singh and all of them were having 1/4th share in the said plot of land. However, in the family partition, which took place in the year 1970, the lands in question fell in exclusive share of Umesh Chandra Prasad Sinha, who died in the year 1984, leaving behind his three sons, namely, the petitioner- Suresh Chandra Prasad Sinha, Subhash Chandra Sinha and Bireshwar Prasad Sinha. It is also the specific case of the petitioner that after death of aforesaid Umesh Chandra Prasad Sinha in the year 1984, there were further partition of the lands in question amongst his three brothers and the petitioner has acquired the right and title over 21.33 decimals of lands, out of total area of 64 decimals of land of aforesaid plot no. 4054. The petitioner has asserted in the writ petition that he is coming in possession over the lands in question to the extent of the share allotted to him.

6. It is also the case of the petitioner that despite objection filed on his behalf on 03.02.2012, vide Annexure-2, no action was taken by the Collector under the Act, 1894 and again a notice under Section 9 of the Act, 1894, was issued on 02.06.2012, which has been brought on record as Annexure-3 to the writ petition, wherein also all the four *khatedars*, who were already dead, were called upon to file their objection, if any, with respect to the lands in question, which is subject matter of the land acquisition proceeding.

7. The learned counsel appearing on behalf of the petitioner submits that, in fact, no award under Section 11 of the Act, 1894 has been prepared till date. He further submits that in absence of determination of award in terms of Section 11 of the Act, 1894, the 80% amount fixed in the notice under Section 12(2) of the Act, 1894



is arbitrary and cannot be countenanced. He next submitted that entire land acquisition proceeding as also notice under Section 12(2) of the Act, 1894, having been initiated/ issued against dead persons are fit to be set aside and quashed by this Court, at least so far the land in question belonging to the petitioner is concerned, on that ground alone. In support of his above contention, he has placed reliance on a Division Bench judgment of Karnataka High Court in the case of **Bangalore Water Supply and Sewerage Board, Bangalore v. State of Karnataka** [AIR 2012 Karnataka 186].

8. Per contra, the learned AC to AG, appearing on behalf of the respondents, has supported the impugned action of the respondent State authorities. He submits that the compensation amount is required to be paid to the interested persons and even if the proceeding was initiated and notice under Section 9 and 12(2) of the Act, 1894 was issued in the name of dead persons, that will not vitiate the entire land acquisition proceeding. According to him, if the petitioner appears before the competent authority, then even today the award amount can be paid to him. In support of his above contention he has placed reliance on a judgment of the Hon'ble Supreme Court in the case of **Smt. Lila Vati Bai v. State of Bombay** [AIR 1957 S.C. 521].

9. However, despite repeated query, he has not been able to show from the materials available on record including from the averments made in the counter-affidavit filed on behalf of the respondent no. 2 and 3 and the supplementary counter-affidavit filed on behalf of the respondent no. 1 to 3 that on the date of issuance of notification either under Section 4 or 6 or on the date of issuance of notice under Section 9 or 12(2) of the Act, 1894, the father of the petitioner, namely, late Umesh Chandra Prasad Sinha was still



surviving. In the whole counter-affidavit/ supplementary counter-affidavit filed on behalf of the respondents, it has nowhere been stated that final award under Section 11 of the Act, 1894 has been prepared with respect to the lands in question. The learned State counsel simply submitted that issuance of notice under Section 12(2) of the Act, 1894 may be treated to be the preparation of award under the provisions of the Act, 1894. The learned State counsel has also not disputed about filing of objections by the petitioner, which have been brought on record as Annexure-2 and 4 to the writ petition.

10. It would be relevant to mention here that the judgment In case of **Smt. Lila Vati Bai vs. State of Bombay** (supra) was with respect to the provisions of The Bombay Land Requisition Act, 1948 and not with respect to The Land Acquisition Act, 1894. The learned State counsel has not shown to this Court that the provisions contained in The Bombay Land Requisition Act, 1948 are pari materia to the provisions of the Land Acquisition Act, 1894. In above view of the matter, this Court is of the opinion that the aforesaid judgment shall not salvage the case of the respondents.

11. On examination of scheme of the Act, 1894, this Court finds that once a notification under Section 4 of the Act, 1894 is issued, the interested person has a right to file objection under Section 5-A of the Act, 1894 and only thereafter, a declaration under Section 6 of the Act, 1894 can be made. However, if urgency provisions under Section 17(4) of the Act, 1894 is invoked, then power of filing objection under section 5A of the Act, 1894 is taken away. Yet, despite invocation of urgency clause under section 17(4) of the Act, 1894, under the scheme of the Act, 1894 the Collector is required to issue public notice to the interested person under Section 9 of the Act, 1894, but in the present case notice under Section 9 of the Act, 1894



was issued against the dead persons and not against the petitioner or his other brothers. Objections were filed on behalf of the petitioner vide Annexure-2 and 4, but in the whole counter-affidavit/ supplementary counter affidavit no order, disposing of the objection filed on behalf of the petitioner, has been brought on record, though the matter is pending before this Court for more than 2 ½ years. After conducting an enquiry by the Collector an award is required to be prepared under Section 11 of the Act, 1894 and only thereafter, a notice under Section 12(2) of the Act, 1894 is required to be issued to the person interested. In the present case, neither the award prepared under section 11 of the Act, 1894 with respect to the land in question has been brought on record nor any notice issued to the petitioner under Section 12(2) of the Act, 1894 has been brought on record. However, so far the payment of 80% of the compensation amount is concerned, that is required to be paid by virtue of the provisions contained in Section 17 (3-A) of the Act, 1894, but payment of 80% of the compensation amount cannot be treated to be preparation of award under Section 11 of the Act, 1894. For better appreciation, Section 17 of the Act, 1894 are reproduced herein below:-

“17. Special powers in cases of urgency.- (1) In cases of urgency, whenever the [appropriate Government] so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government]], free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to

any such station, [or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity,] the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the [appropriate Government] enter upon and take possession of such land, which shall thereupon vest absolutely in the [Government] free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections, the Collector shall, at the time of taking possession, offer to the persons interested, compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

[(3-A) 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.

(3-B) The amount paid or deposited under sub-section (3-A), shall be taken into account for determining the amount of compensation, required to be tendered under section 31, and where the amount so paid or deposited

exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue].

(4) In the case of any land to which, in the opinion of the [appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the [appropriate Government] may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time [after the date of the publication of the notification] under section 4, sub-section (1)]”.

12. From plain reading of the aforesaid provisions, it is apparent that once the State Government invokes the urgency clause under Section 17(4) of the Act, 1894, then it is required to tender 80% of the compensation amount and only after payment of 80% of the compensation amount, possession can be taken over the lands so proposed to be acquired. However, payment of 80% of the compensation amount is subject to final determination under Section 11 of the Act, 1894. If excess amount has been paid, then the person having received that amount is required to refund the same within three months from the date of Collector's award, which must be necessarily under Section 11 of the Act, 1894.

13. This is not the first case, which has been brought to the notice of this Court. This Court has come across to the large number of cases where without preparation of award under Section 11 of the Act, 1894, possession is taken over the lands only on the ground that 80% of the compensation amount has been tendered and, therefore, it should be construed that award has been prepared with respect to the lands so acquired. I am afraid, the understanding and appreciation of the scheme of the Act, 1894 by the State authorities is completely misplaced and cannot be countenanced.

14. It is also well settled that any proceeding initiated

against a dead person vitiates the whole proceeding. In the present case, apart from other infirmities, noticed above, this Court finds that entire proceeding was carried out and all the notices either under Section 9 or 12(2) of the Act, 1894 were issued in the name of dead persons and no correction was made despite the objection raised on behalf of the writ petitioner.

15. For the reasons recorded above, impugned proceeding in Land Acquisition Case No. 9 of 2011, as also the impugned notice dated 02.06.2012 (Annexure-3) issued under Section 9 of the Act, 1894 and the impugned notice dated 17.09.2012 (Annexure-6) issued under Section 12(2) of the Act, 1894, so far it relates to the lands in question belonging to the writ petitioner, are hereby set aside and quashed. However, this will not come in the way of the respondent authorities to start a fresh proceeding for acquisition of the lands in question belonging to the petitioner strictly in accordance with law.

16. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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