

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12362 of 2013

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Surendra Prasad Sharma, Son Of Late Jainandan Prasad Singh, Resident Of Village + P.O. Sheotar, P.S. Atari, District - Gaya, At Pesent Sheotar House Lalkothi Compound Near P.S. Civil Lines, District Gaya

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary Rural Works Department, Government of Bihar, Patna
3. The Collector, Gaya District Gaya
4. The Executive Engineer Rural Works Department, Works Division Gaya
5. The Assistant Engineer Rural Works Department, Works Division Gaya
6. Birendra Pd. Singh.
7. Bhusan Pd. Singh
8. Jitendra Pd. Singh

All Sons Of Late Jainandan Pd. Singh, Resident Of Village + P.O. Sheotar, P.S. Atari, District - Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vishwanath Prasad Sinha, Sr.Adv.

For the Respondent nos.1to5 : Mr. Anil Kumar Sinha, GA-9

Mrs. Nutan Kumari, AC to GA-9

For the Respondent nos.6to8 : Sanjay Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

10 17-03-2016

This is slightly a peculiar case.

Indisputably, the lands bearing plot no.771, 773, 774 and 775 area 37 decimals situate at Mauza Chakra, P.S.-Atri, District-Gaya (in short 'lands in question') belong to the petitioner and his full brothers, who have been impleaded as the respondent nos.6 to 8. A public road known as Jathian-Chakra Road has been constructed by the respondent State of Bihar and its functionaries and for construction of the aforesaid road the lands of the petitioner has also been used. In fact, it is the case of the petitioner that the entire area of the lands in question has been used for the purposes of construction of the aforesaid public road.

Indisputably, no land acquisition proceeding was started by the State Government or its functionaries for acquiring the lands in question for the purposes of construction of aforesaid public road, yet construction over the lands in question was made,

which finds admission in the counter affidavit filed on behalf of the respondent no.4, a functionary of the State Government. However, according to the respondent no.4, the entire area of the lands in question has not been used and only a part of the lands in question has been used for the purposes of construction of aforesaid public road. It is also not in dispute that no compensation amount has been paid to the petitioner or his full brothers by the State authorities for construction of aforesaid public road over the lands in question belonging to them.

Learned senior counsel appearing on behalf of the petitioner submits that, for redressal of his valid grievances particularly for grant of compensation, the petitioner approached the different authorities including the respondents, but no order was passed for redressal of his valid grievances, as a result of which the petitioner was left with no option but to approach this Court in the present proceeding filed under Article 226 of the Constitution of India seeking a direction to the respondents for payment of adequate compensation to the petitioner for the lands in question used for the purposes of construction of aforesaid public road.

This matter is pending since 01.07.2013 before this Court. By an order dated 27.06.2014 and again by an order dated 28.07.2014, learned State counsel was directed to file counter affidavit. Despite aforesaid orders, counter affidavit was not filed on behalf of the official respondents. In above view of the matter, a co-ordinate Bench of this Court passed an order on 19.08.2014, which reads as follows:-

“This Court, vide order dated 28th July, 2014, had given direction to file counter affidavit but no counter affidavit has been filed by the State as yet. Assurance has been given by the State that the counter affidavit will be filed within one week. In failure, the person concerned will remain

physically present before this Court on the next date along with relevant records to assist in the matter.”

In view of the aforesaid order, a counter affidavit was filed on 29.08.2014 on behalf of the respondent no.4, the Executive Engineer, Rural Works Department, Works Division, Gaya alone, which was sworn by one Nand Lal Ram, District Engineer. However, no counter affidavit was filed on behalf of the other respondents particularly the respondent nos.1 to 3 and 5. In the counter affidavit filed on behalf of the respondent no.4, nowhere it has been asserted that the deponent was authorized to file this affidavit on behalf of the other respondents also. In the aforesaid counter affidavit, a peculiar and unusual stand has been taken by the respondent no.4 particularly in paragraph 9 of the counter affidavit, which reads as follows:

“That it is stated and submitted that under PMGSY there is no provision for compensation to be paid by Rural Works Department. However, still the petitioner has any grievance the respondent no.4 is ready to handover the land in question to the petitioner after demolishing the constructed road, if he so wishes.”

In view of the aforesaid peculiar and unusual stand taken by the respondent no.4 in his aforesaid counter affidavit, a co-ordinate Bench of this Court passed an order on 29.08.2014, which reads as follows:-

“Heard learned counsel for the petitioner and learned counsel for the State.

There is no dispute in the present case that 37 decimal of land of the petitioner has been utilized in the construction of Jathian Chakra Road under the Prime Minister Gramin Sadak Yojna but the respondent was/is not ready to part with compensation amount to the petitioner on the plea that there is no provision for acquisition and payment of compensation.

In that view of the matter, alternative relief has been sought from the respondents that they would

remove the road from the raiyati land of petitioner and bring back the same to its original position but that will not end of the matter. If the land is utilized and respondents want to continue with constructed road, they will have to pay compensation amount or if they will remove the road, certainly it will cause loss to the State.

In that circumstance, this Court may give direction to the State authority to calculate the amount of loss caused to the State exchequer that will be recovered from the pocket of responsible persons.

At the instance of the State, let this case be listed after six weeks.”

Thereafter, a fresh counter affidavit was filed on 15.10.2014 on behalf of the respondent no.4, which has also been sworn by the same officer viz Nand Lal Ram, District Engineer, CE-I Office, R.W.D., Patna, who had sworn the previous counter affidavit. In this counter affidavit, a plea has been taken that the petitioner is not entitled for payment of compensation for the lands in question utilized for the purposes of construction of aforesaid public road. It has also been pleaded that it would be easier for the State authorities to remove the public road from the lands in question instead of paying the compensation to the petitioner, which shall require higher amount than the costs for removal of public road.

In a welfare State like ours, the respondent no.4, who is a responsible government officer, was not expected to take such a peculiar and unusual, rather whimsical, stand that the public road in question shall be removed at the costs of the State exchequer and adequate compensation shall not be paid to the raiyat/the petitioner, as it would cost more. Admittedly, the petitioner has suffered a loss since the date of construction of aforesaid public road over his lands. This Court itself could have directed for payment of compensation to the petitioner after realizing that amount either from the salary or from the pocket of the respondent

no.4 particularly in the background of the order dated 29.08.2014 passed by a co-ordinate Bench of this Court, which has been reproduced above, but at this stage, learned GA-9 appearing on behalf of the respondent nos.1 to 5 submits that the matter may be remitted to the Principal Secretary, Department of Rural Works, Government of Bihar, Patna, who shall look into the entire matter and shall pass an appropriate order on all the issues including the issue regarding payment of compensation to the petitioner. It would not be out to place mention here that so far the respondent nos.6 to 8 are concerned, they have filed their affidavit in the present case authorizing the petitioner to receive compensation for the entire area of the lands in question belonging to them.

In view of the aforesaid fair stand taken by the learned GA-9, appearing on behalf of the State Government and its functionaries, the Principal Secretary, Rural Works Department, Government of Bihar, Patna is directed to consider and decide afresh all the claims raised on behalf of the petitioner in the present proceeding. He shall take into consideration the valid claim of the petitioner for payment of adequate compensation for the lands in question used for the purposes of construction of aforesaid public road. He shall also examine as to whether because of whimsical and arbitrary action/approach of the respondent no.4, the State has suffered certain loss and if yes, then he shall be at liberty to start an appropriate disciplinary proceeding against the respondent no.4 for passing an appropriate order of punishment and/or for recovery of the loss suffered by the State of Bihar.

In order to expedite the matter, the petitioner is directed to appear either himself in person or through his lawyer before the Principal Secretary, Department of Rural Works, Government of Bihar, Patna within a period of one month from

today with a certified copy of the present order, whereafter the Principal Secretary shall proceed to decide the matter in accordance with law as also in the manner indicated above. The petitioner shall furnish a copy of the writ petition as also the counter affidavits filed in the present proceeding to the Principal Secretary. The petitioner shall also be at liberty to file a fresh representation disclosing all his valid claims. The Principal Secretary shall dispose of the matter at an early date preferably within a period of three months from the date of appearance of the petitioner in the manner indicated above. However, before passing any final order, an opportunity of hearing must be given to all concerned including the respondent no.4.

The writ petition stands finally disposed of with the observations and directions made above.

Arvind/-

(Birendra Prasad Verma, J)

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