

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.958 of 2017

IN

Civil Writ Jurisdiction Case No. 10018 of 2016

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1. Rishikesh Kumar, Son of Late Bagesh Wari Prasad, resident of Mohalla - Golakpur, P.S. Pirbahore, District - Patna
 2. Rajesh Kumar, Son of Late Shivnarayan Rajak, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 3. Mohan Rajak, Son of Late Nepali Dhobi, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 4. Hari Narayan Chaudhary, Son of Late Sitaram Chaudhary, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 5. Mithilesh Kumar, Son of Late Bishun Lal, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 6. Lal Babu Rajak, Son of Late Rajendra Rajak, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 7. Bhushan Lal, Son of Late Shaligram Bhagat, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna
 8. Krishna Kumar, Son of Jadu Ram, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 9. Manoj Kumar, Son of Late Yamuna Prasad Yadav, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 10. Farman Abbas, Son of Late Mazahar Abbas, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 11. S. Muntazir Abbas, Son of Late Hasan Abbas and maternal grandson of Late Nazim, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 12. Smt. Indu Rani, Wife of Late Tripurari Yadav, resident of Mohalla - Golakpur, P.S. Sultanganj, District – Patna.
 13. Ashok Rajak, Son of Late Rajendra Rajak, Grandson of Late Putul Dhobi resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 14. Ashok Kumar, Son of Late Sheokant Gupta, resident of Mohalla - Golakpur, P.S. Pirbahore, District - Patna
 15. Om Prakash, Son of Late Ram Chandra Mahto, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 16. Paras Nath Yadav, Son of Late Shaligram Bhagat, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 17. Awadhesh Chaudhary, Son of Late Hiranman Chaudhary, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.
 18. E. Halim Chand, Son of Late Gulam Ahmed Muztaba, resident of Mohalla - Golakpur, P.S. Pirbahore, District – Patna.

.... Petitioners/Appellants

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. The District Land Acquisition officer, Patna.



5. The Circle Officer, Patna Sadar, Patna.
6. The Vice - Chancellor, Patna University, Patna.
7. The Registrar, Patna University, Patna.

Respondents-Respondents

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Appearance :

For the Appellant/s : Mr. P. K. Shahi, Senior Advocate

Mr. Vikas Kumar, Advocate

For the State : Mr. Asif Kalim, AC to AAG-12

For the Patna University : Mr. Vivekanand Pd. Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-07-2017

Seeking exception to an order dated 22.06.2017 passed by the Writ Court in Civil Writ Jurisdiction Case No.10018 of 2016, this appeal has been filed under Clause 10 of the Letters Patent.

Seeking restoration of possession of land said to have been acquired in Land Acquisition Case No.78 of 1958-59 and Land Acquisition Case No.63 of 1959-60 and invoking the provisions of Section 22(4) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act'), the present appeal has been filed primarily on the ground that as contemplated under Section 24(2) of the Act as the monetary benefit accruing due to award has not been



paid and the possession of the land has been not been taken, the learned Writ Court should have allowed the writ petition and granted relief and in support thereof, learned counsel for the petitioners placed reliance on the decisions of the Hon'ble Supreme Court in the case of **Pune Municipal Corporation and another Versus Harakchand Missirimal Solanki and others**, [(2014) 3 SCC 183]; **Rajiv Chowdhrie HUF Versus Union of India & Ors.** [2015 (2) PLJR 302 (SC)]; and **Aligarh Development Authority Versus Megh Singh & Ors.** [2016 (3) PLJR 93 (SC)] to say that ingredients necessary for applicability of Section 24 of the Act are not fulfilled in the present case.

Sri P.K. Shahi, learned Senior Counsel, appearing for the petitioners taking us through various documents on record tried to indicate that physical possession of the acquired land has not been taken and as there is failure of payment of compensation as awarded, the provisions of Section 24(2) of the Act can be invoked.

However, learned counsel for the State and the Patna University refuted the aforesaid contention and categorically say that the possession has been taken; the petitioners are encroachers on the land in question and, therefore, in relegating the petitioners to take recourse to the common law available on account of disputed questions of fact, the learned Writ Court has not committed any error.



From the proceedings and the materials available on record, we find that the issue in question arises pertaining to certain acquisition proceedings initiated in the year 1950, on a request made by the Patna University various lands were acquired by Notification issued in the year 1958 and the proceedings were held for acquisition in the year 1958-59 and 1959-60, an award for the aforesaid proceedings were prepared and on 01.10.1964, awards have been declared.

Be that as it may be, the learned Writ Court after evaluating various documents that came on record, in para 11, 12 and 13 recorded the following findings:-

“11. In the present case, the awards of the acquisition proceedings were prepared much prior to five years of commencement of the Act 2013 and the aforesaid fact is not in dispute. It is also an admitted position that almost all the awardees had received the compensation amount at the rate as fixed initially by the competent court but the awardees did not get compensation of differential enhanced amount. The main controversy in this matter regarding the taking of physical possession. The respondents claim that some part of acquired land was taken in possession by the Administration for more than four decades ago and for remaining portion of the land the original awardees assured to vacate the acquired lands but subsequently, they got stay order from the court. There is nothing on the record to show as to which portion of the acquired land was taken in possession by the concerned authorities and which portion of the land remained in



physical possession of the land owners and in my view, the aforesaid disputed question cannot be decided in this writ petition. This is also a disputed fact as to whether petitioners are legal heirs of original awardees or not and the above stated facts can only be decided by a competent court in a regular suit.

12. No doubt, the Act 2013 is an Act of beneficiary nature and the aforesaid Act protects the land owners by making some special provisions in the Act but the above stated Act does not give any jurisdiction to this court to decide right, title and possession of a person. Therefore, in my view, this writ petition is devoid of merit and is liable to be dismissed on admission stage itself.

13. Accordingly, this writ petition stands dismissed. However, it is made clear that this order shall not cause any prejudice to petitioners, if they seek declaration for their right and title in respect of lands in question before any competent court in accordance with law.”

Before us, serious disputes on facts have been raised by the Patna University with regard to physical possession being taken and facts to say that the petitioners are not the legal heirs of the original land owners, they are encroachers and, therefore, all these disputes cannot be adjudicated in these proceedings.

Having considered the rival contentions and on consideration of the reasons that weighed with the learned Writ Court as detailed herein above, we find no error in the order passed by the learned Writ Court warranting reconsideration. The appeal is



dismissed with liberty to the petitioners to take recourse to the remedy as suggested by the learned Writ Court.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.07.2017
Transmission Date	

