

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 4844 of 2015

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1. Smt. Shanti Roy, Wife of Shri Sheo Bihari Roy
 2. Amitabh Kumar, Son of Shri Sheo Bihari Roy
 3. Ajitabh Kumar, Son of Shri Sheo Bihari Roy, All resident of Village-Kandharpur, P.S.- Sandesh, District - Bhojpur presently residing at House No.22/A, Buddha Colony, P.S.- Buddha Colony, District- Patna.
 4. Smt. Anita Sharma, Wife of Birendra Sharma, Resident of Village- Chhotki Kharwan, P.S.- Dulhin Bazar, District- Patna presently residing Near B.D. Public School, Buddha Colony, P.S. - Buddha Colony, District- Patna.

.... Petitioners

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Revenue & Land Reforms, Government of Bihar, Patna.
4. The Deputy Secretary, Department of Revenue & Land Reforms, Government of Bihar, Patna.
5. The Divisional Commissioner, Patna Division, Patna.
6. The District Magistrate, Patna.
7. The District Land Acquisition Officer, Patna.
8. The Patna Municipal Corporation through its Municipal Commissioner.

.... Respondents

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Appearance :

For the Petitioners : Mr. Bishnu Kant Dubey, Adv.
Mr. Panchu Ram, Adv.
For the P.M.C. : Mr. Prasoon Sinha, Adv.
For the State : Mr. Asif Kalim, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

CAV JUDGMENT

Date: 24-04-2017

1. Petitioners have preferred this writ petition under Article 226 of the Constitution of India praying therein to quash the part of Gazette Notification bearing No. 416 dated 07.10.1961 so far it relates to the petitioners by which the revenue department acquired a chunk of lands measuring 64.49 acres for development of the city of



Patna and also for issuance of a direction to District Magistrate, Patna to produce the proceeding of Land Acquisition Case No. 63/ 1961-1962 and to quash the same so far it relates to the petitioners and furthermore, to declare the land acquisition proceeding lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “ 2013 Act”).

2. In 1957, a development scheme was formulated by the then Patna Improvement Trust which was approved in the year 1958. Thereafter, a declaration was published in the Bihar Gazette extra ordinary dated 07.10.1961 by which the State Government acquired a chunk of lands measuring 64.49 acres situated in different villages. The aforesaid acquired lands were handed over to Patna Improvement Trust and Land Acquisition Case No. 63/ 1961-1962 was initiated by the Collector of Patna. The compensation of the aforesaid lands was not paid to the land owners and litigation started between the State as well as land owners and others. The aforesaid litigation went up to the Hon’ble Apex Court. However, after sometime the State Government took a decision to return the acquired land to the land owners on 25.02.1975 and the aforesaid decision was placed before Patna Regional Development Authority and vide resolution no. 61/81 dated 14.09.1981 the Patna Regional Development Authority took the



decision to return the acquired land to the land owners but the aforesaid decision was challenged by one Budha Grih Nirman Sahyog Samiti, who was claiming certain piece of lands out of the said acquired lands. The aforesaid Samiti filed CWJC No. 3241 of 1982 in which Division Bench of this Court vide order dated 23.05.1984 directed the Collector, Patna to prepare the award expeditiously as early as possible. The litigation of the parties went to Hon'ble Supreme Court and in Civil Appeal No. 7803 of 1995, the Apex Court vide judgment dated 31.08.1995 directed the State Government and its official to complete the proceeding of aforesaid land acquisition case as early as possible. Likewise several times direction was given by this court as well as Apex Court to the State Government as well as its official to prepare the award and complete the proceeding of aforesaid land acquisition case.

3. The claim of the petitioners is that they purchased lands of survey khata no. 76 and 80, plot no. 527, 521, 522, 526, 541, 615, 616, 617 and 618 on different dates through various sale deeds but admittedly the aforesaid purchase was made after initiation of Land Acquisition Case No. 63/ 1961-1962. Furthermore, claim of the petitioners is that they came in possession of their purchased lands and got constructed houses and school buildings. They got mutated their names and also got electric connection, telephone connection and



made payment of tax to Patna Municipal Corporation. The stand of the petitioners is that the State Government as well as Patna Regional Development Authority and Patna Municipal Corporation failed to take possession of purchased lands of the petitioners nor the concerned authorities paid compensation amount either to vendors of the petitioners or the petitioners and after coming into force of 2013 Act, the aforesaid land acquisition proceeding was lapsed in view of Section 24(2) of 2013 Act.

4. Counter affidavit has been filed on behalf of the respondent no. 6 and 7 in which it has been averred that possession of acquired land was handed over to requisitioning authority on 05.02.1962 and in the light of judgment dated 30.07.1993 passed in CWJC No. 6373 of 1988 of this court, the award for 54.217 acres land was prepared on 08.01.1994 and thereafter, notice under Section 12(2) of the Land Acquisition Act was issued to concerned land owners for payment of compensation amount. It has, specifically, been pleaded at para-9 of the counter affidavit that compensation amount in respect of certain area of plot no. 527, 524, 525, 526, 521, 522 and 541 was paid to the land owners of the said plots on 24.03.1982 whereas for remaining areas, the concerned land owners refused to receive the compensation amount upon which notices for payment of compensation amount to the awardees were published in newspapers,



namely, Hindustan Times on 18.12.1995 and in Aaj on 20.12.1995 and thereafter, the compensation amount was deposited in the treasury. It has, further, been pleaded by the respondent no. 6 and 7 that original record and map of the proceeding were found missing and, thereafter, at the direction of this court passed in CWJC No. 4132 of 2005, the original record and map was reconstructed. It has also been pleaded at para 12 of the counter affidavit that respondents had already tendered payment of compensation to the concerned land owners but the concerned land owners refused to accept the compensation and, therefore, Section 24(2) of 2013 Act is not applicable in this case. It has also been pleaded that Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement (Amendment) Second Ordinance 2015 was published in gazette on 30.05.2015 in which a new proviso has been inserted after Section 24(2) of the aforesaid Act which says that *“in computing the period referred to in this sub-section, any period during which the proceeding for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in any designated account maintained for this purpose, shall be excluded.”* Therefore, in view of the aforesaid provision the proceeding in question cannot be said to have lapsed.



5. Learned counsel appearing for the petitioners submits that Section 24(2) of 2013 Act clearly says that “ *if an award under Section 11 of the Old Act has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.*”

6. Learned counsel for the petitioners submits that the aforesaid provision goes to show that if the award has been prepared five years or more prior to commencement of 2013 Act, but physical possession of acquired land has not been taken or the compensation has not been paid, then in that circumstance, the aforesaid proceeding shall be deemed to have lapsed. He submitted that even if the physical possession was taken but compensation has not been paid then also, the proceeding shall be lapsed in view of the aforesaid section. He further submitted that in the present case, the respondents have admitted that up till now, compensation has not been paid to the land owners and, therefore, the entire proceeding initiated by Gazette Notification bearing no. 416 dated 07.10.1961 shall be deemed to have lapsed. He further submitted that mere deposit of compensation amount in treasury is not amount to payment of compensation amount to the land owners. He cited the decision of **Pune Municipal**



Corporation and another vs. Harakchand Misirimal Solanki and others reported in **(2014) 3 SCC 183** in which it has been held by the Apex Court of this country that *“For purposes of Section 24(2) of 2013 Act compensation shall be regarded as “paid” if compensation is actually tendered to land owners/interested persons, or, is offered to interested persons and on their refusal to accept the same such compensation is deposited in court.”*

7. Learned counsel for the petitioners also cited decision of **Sree Balaji Nagar Residential Association vs. State of Tamil Nadu and others** reported in **2014(4) PLJR (SC) 318** in which it has been held by the Apex court that *“Even by stay of court or any other reasons State failed to take possession of acquired land, the land acquisition proceeding deemed to have lapsed in terms of Section 24(2) of 2013 Act.* The Hon’ble Apex Court reiterated the same view in the case of **Rajiv Chowdhrie HUF vs. Union of India and others** reported in **2015(2) PLJR (SC) 302** in which it has been held by the Apex Court that *“If the State fails to take physical possession or to make payment of compensation, the entire acquisition proceeding shall have to be lapsed and even if the physical possession could not be taken on account of any order of stay by a court of law or any other reasons then also, the aforesaid circumstance will not make any affect because the Legislature has made the period of five years under Section 24(2) absolute and unaffected by any delay in the proceedings on account of any order of stay by a court of law.”*

8. Learned counsel for the petitioners also relied upon a decision of **Rattan Singh and another vs. Union of India and**



others reported in 2016(1) PLJR SC 241 in which it has been held by the Hon'ble Apex Court that *"Compensation can be regarded as paid if the same has literally been paid to the person interested, or after being offered to such person, it was deposited in the court and deposit of the compensation in Government Treasury would not amount to compensation being paid to the person interested."* He further submitted that the Apex Court of this country went to this extent that it is for the requisition authority to make the payment and does not require the land owner to come and receive payment.

9. Learned counsel for the petitioners further submitted that it is an admitted case of the parties that declaration was made in the year 1962 but according to respondents, award was prepared in the year 1994 and, therefore, even if the award was prepared in the year 1994, then also, the acquisition proceeding had already lapsed in view of Section 11 A of Land Acquisition Act, 1894 which says that *"The Collector shall make an award under Section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse."* He further submitted that aforesaid provision is mandatory in nature and as a matter of fact, the aforesaid acquisition proceeding had already lapsed much earlier and after lapse of the aforesaid acquisition proceedings, petitioners had purchased lands in question and came to possession of the aforesaid lands and, therefore, the State cannot say



that petitioners had purchased the lands when the lands had already been acquired by the State Government. Learned counsel for the petitioners relied upon a decision of **Singareni Collieries Co. Ltd. vs. Vemuganti Ramakrishan Rao & Ors.** reported in **2014(1) PLJR (SC) 69** in which it has been held by the Apex Court that *“In order to be valid, the Award must be made within a period of two years from the date of the publication of the declaration under Section 6 of the Land Acquisition Act, 1894.”*

10. Learned counsel for the petitioners further submitted that in Special Leave Petition (Civil) No. 7620 of 2007, a counter affidavit was filed on 27.11.2007 by the Executive Engineer Division-B, Patna Municipal Corporation in which at para 2 of the aforesaid counter affidavit, it was admitted by the Patna Municipal Corporation that only paper possession was taken and the compensation in respect of the acquired lands was never paid to land owners. The Patna Municipal Corporation also admitted in the aforesaid counter affidavit that acquired lands were always remained in possession of the land owners and large number of houses had come up on the aforesaid lands. He further submitted that no doubt, the State paid compensation for certain area of plots in question but as a matter of fact, the aforesaid area was acquired for construction of the road and compensation to the land owners was paid in respect of construction



of the aforesaid road and, moreover, compensation regarding very small area of the lands was paid. Continuing his submission, he submitted that Annexure-4 to the writ petition goes to show that compensation of large portion of acquired lands was never paid to the land owners.

11. On the other hand, learned counsel appearing for Patna Municipal Corporation as well as learned counsel appearing for the State refuted the above stated submissions arguing that lands in question were acquired in the year 1962 and subsequently, award was prepared. They also submitted that so far as payment of compensation amount is concerned, payment of compensation regarding certain portion of acquired lands was made to beneficiaries and they received the payment but some land owners refused to receive the compensation amount and thereafter, the compensation amount was deposited in Government treasury. They further submitted that land owners as well as some other persons took the litigation up to the Hon'ble Apex Court several times and in the year 1995, in Civil Appeal No. 7803 of 1995, the Apex Court already held that possession of acquired land was taken by the concerned authority and, therefore, the petitioners cannot say that possession of acquired land was never taken by the concerned authorities. They further submitted that dispute of the present case had already been set at rest by the



Apex Court in above-said Civil Appeal No. 7803 of 1995 and petitioners cannot dispute the validity of acquisition proceeding in the present writ petition. They further submitted that the Apex Court again reiterated the view taken in Civil Appeal No. 7803 of 1995 when Budha Grih Nirman Sahyog Samiti and others challenged the order of this court by which this court directed the Budha Grih Nirman Sahyog Samiti to offer membership to the members of Buddha Colony Sangharsh Samiti and observed in order dated 13.11.2013 passed in Civil Appeal No. 7561 of 2008 that acquisition proceeding in question was a valid acquisition proceeding and that acquisition proceeding cannot be disturbed. They further submitted that above stated decisions/ observations of Apex Court are binding upon this court and this court cannot reopen the matter. On the strength of aforesaid submissions, learned counsels for the State as well as Patna Municipal Corporation prayed for dismissal of this writ petition.

12. Certain facts are admitted in this writ petition. It is an admitted position that a declaration was published in the Bihar Gazette dated 07.10.1961 by which the State Government acquired a chunk of lands measuring 64.49 acres situated in different villages of District Patna and subsequently, Land Acquisition Case No. 63/1961-1962 was initiated. It is also an admitted position that payment of



compensation for certain portion of acquired lands was made to land owners but the payment of compensation of remaining part of acquired lands were not made to the land owners as the land owners refused to receive the compensation amount and indulged themselves in litigation which went several times up to the Apex Court of this country. It is an admitted case of the State that award of acquired land was not prepared within two years of acquisition of the lands in question. It is also an admitted position that petitioners purchased some portion of acquired lands from the land owners much after two years of acquisition of the lands in question.

13. Here, I would like to refer **Section 11 A of Land Acquisition Act, 1894** which says that *“The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.”*

14. Admittedly, Section 11 A of the Land Acquisition Act, 1894 is mandatory in nature. In the present case, it is an admitted position that the award was not prepared within two years of acquisition of the lands in question. However, the Apex Court of this country has already held that award regarding the acquired lands of the present dispute was prepared in accordance with law and, therefore, this court does not have any scope to reconsider the above



stated point but it is an admitted position that petitioners had purchased the lands in question much after two years of acquisition of the lands and, therefore, it cannot be said that petitioners had purchased the acquired lands during pendency of acquisition proceeding because according to Section 11 A of Land Acquisition Act 1894, at the time of purchase of lands of the petitioners, there was no acquisition proceeding in respect of their lands.

15. It is an admitted position that compensation in respect of part area of acquired lands was paid to land owners and the aforesaid fact is evident from perusal of Annexure-4 to the writ petition which goes to show that compensation of part area of acquired plots were paid to the land owners of the aforesaid plots whereas compensation regarding large area of acquired plots were not paid to its land owners till the year 2014. It has, specifically, been pleaded and submitted by the petitioners that compensation was paid in respect of those lands on which road was constructed and as a matter of fact, no compensation was paid in respect of purchased lands of the petitioners.

16. The petitioners have based their claim on the strength of **Section 24(2) of 2013 Act** which runs as follows:-

Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated



under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

17. The bare perusal of aforesaid provision shows that if the land acquisition proceeding initiated under the Land Acquisition Act, 1894 and award under section 11 of Land Acquisition Act 1894 has been made five years or more prior to commencement of new Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceeding shall be deemed to have lapsed.

18. In the present matter, admittedly, the declaration was



made in the year 1962 and the award was prepared much prior to five years of commencement of new 2013 Act. It is an admitted position that compensation of larger portion of acquired land was not paid to beneficiaries and claim of the respondents is that compensation amount was deposited in Government treasury as the beneficiaries refused to receive the compensation amount and got indulged themselves in litigation with concerned authorities and, therefore, it is an admitted position that compensation in respect of purchased lands of the petitioners was never paid either to original land owners or to petitioners rather it was deposited in Government treasury.

19. Now, the question arises as to whether the deposit of compensation amount in Government treasury is amount to payment of compensation to the beneficiaries or not. The aforesaid question was raised before the Apex Court in the case of **Pune Municipal Corporation and another (Supra)** and the Hon'ble Apex Court held that deposit of compensation amount in Government treasury is not enough and for purpose of Section 24(2) of 2013 Act, compensation shall be regarded as "paid" if compensation is actually tendered to land owners/ interested persons or is offered to interested persons and on their refusal to accept the same, such compensation is deposited in court. In the aforesaid case, the Apex Court held that if land acquisition proceeding initiated under the 1894 Act and award was



made five years or more prior to commencement of 2013 Act but compensation was not paid, then the acquisition proceeding shall be deemed to have lapsed.

20. In the present case also, award was prepared much prior to five years of commencement of 2013 Act and the compensation amount was allegedly deposited in Government treasury on refusal to accept the same by land owners/ interested persons and admittedly, the compensation amount was not deposited in court. However, the Apex Court in other decisions went to say that if compensation amount is not deposited in the account of the beneficiaries, then, it shall be deemed that compensation amount has not been paid.

21. Learned counsel for the petitioners have referred several decisions on the above stated point as I have already stated above and, therefore, it is obvious from the above stated facts and materials available on record that acquisition proceeding initiated in respect of purchased lands of the petitioners shall be deemed to have lapsed after commencement of 2013 Act. It is needless to discuss all the above stated referred decisions because almost all the decisions say that if the award was prepared prior to five years or more of commencement of 2013 Act and possession has not been taken or compensation has not been paid, the entire acquisition proceeding



shall be deemed to have lapsed in view of Section 24(2) of 2013 Act.

22. No doubt, the Hon’ble Apex Court of this country held in Civil Appeal No. 7803 of 1995 that possession of acquired land was taken by the concerned authority but it is admitted case of the parties that compensation of acquired land has not been paid to land owners or interested persons in accordance with law as yet and, therefore, it is clear from the aforesaid fact that due to non payment of compensation of lands of the petitioners the entire acquisition proceeding in respect of the lands of the petitioners shall be deemed to have lapsed in the light of mandate of Section 24(2) of 2013 Act and, therefore, I have no option except to hold that proceeding of Land Acquisition Case No. 63/ 1961-1962 in respect of lands of the petitioners have already lapsed due to coming into force of Section 24(2) of 2013 Act and accordingly, this writ petition stands allowed and the proceeding initiated by Land Acquisition Case No. 63/ 1961-1962 in respect of lands of the petitioners are declared to have lapsed in view of Section 24(2) of 2013 Act.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

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