

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20661 of 2014

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1. Sheikh Akbar Son of Late Sheikh Jamir Resident of Pirpanti Sunderpur, P.S. Pirpanti, District - Bhagalpur

2. Bibi Jubeda Khatun Wife of Sheikh Nasim, Daughter of Sheikh Jamir Resident of village - Maharajpur, P.S. Taljhari, District - Sahebganj, (Now - Jharkhand)

.... Petitioner/s

Versus

1. The State of Bihar

2. The Land Reform Deputy Collector, Kahalgaon, District - Bhagalpur

3. The District Land Acquisition Officer, Bhagalpur

4. The Circle officer, Pirpanti Anchal, District - Bhagalpur

5. SK. Farooq Son of Late SK. Jamir Resident of (Pirpanti, Sunderpur, P.S. Pirpanti, District - Bhagalpur)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Sahi,
Mr. Radha Raman Verma

For Respondent no.5 : Mr. Bindhyachal Singh,
Mr. Satya Prakash

For the State : Mr. Dharmendra Kumar, AC to AAG IX

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 14-09-2017

Heard learned counsel for the petitioner and learned counsel for the State as well as respondent no.5.

Petitioner no.1 and respondent no.5 are brothers. Sk. Jamir was father having two sons and one daughter.

The Government of Bihar has acquired the land for establishment of NTPC. The land of the original land holder, namely, Sl. Jamir was acquired having an area of 0.65 1/3 Acre of land, appertaining to Khata No.9, Kheshra No.1974. Award was prepared and notices were given. As per petitioner, he was



also entitled to share in the land whereas learned counsel for the respondent submits that partition had taken place and in pursuance thereof petitioner has sold land of his share earlier so he is not entitled to share in the award amount. In the partition deed, it has been mentioned that in the event of acquisition of land by NTPC both sons would be entitled to 50:50 share in the award amount. In the meantime, respondent has filed a petition for mutation which was allowed but same was set aside in appeal, matter was remanded back to the Circle Officer, Circle Officer again decided the case in favour of the respondent which was challenged in appeal, again sent back to Circle Officer which is pending before him.

During pendency of mutation case the Land Acquisition Officer has decided the matter vide order dated 1.12.2014 and rejected the claim of the petitioner which has been impugned in the present case. It will be relevant to quote Section 30 of the Land Acquisition Act, 1894:

“30. Dispute as to apportionment.- When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of



the Court.”

In view of contour of Section 30 of the Land Acquisition Act, the matter was to be referred to the court for resolution.

Learned counsel for the respondent placed reliance on Section 18 of the Land Acquisition Act, 1894 wherein power has been conferred upon the Collector in case of dispute of apportionment the matter has to be referred to the court but respondent submits that requirement is that the application be presented before the Collector within six weeks from the date of award of the Collector within six weeks of receipt of notice from the Collector under section 12, sub-section(2) or within six months from the date of the Collector’s award, whichever period shall first expire. In support of his submission he has placed reliance on the judgment of the Hon’ble Supreme Court in the case of Madan and another v. State of Maharashtra, reported in (2014)2 SCC 720. This judgment is not applicable to the fact of the present case as the matter relates to the enhancement of the compensation. The aforesaid judgment has interpreted and reconciled Sections 18 and 30 of the Land Acquisition Act in the manner that Section 18 applies to situation where apportionment made in the award has been objected and Section 30 applies where no apportionment has been made by the Collector.



In such view of the matter, this Court directs the Collector, Bhagalpur to refer the matter to the court, judgment and decree passed by the court will be binding upon both sides. Accordingly apportionment will be made in terms of the judgment and decree.

With the aforesaid observation and direction this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.9.2017
Transmission Date	NA

