

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2662 of 2011

In

Civil Writ Jurisdiction Case No. 6966 of 2010

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Pradeep Kumar Tiwary, son of Late B N Tiwari, resident of Village and Post Office and Police Station Parbatta, District Khagaria

.... Petitioner/s

Versus

1. The State of Bihar
2. Shri Abhay Kumar Singh the then Collector till February 2011, District Khagaria
3. Smt. Palka Sahni, the then Collector till May, 2011
4. Shri Dharmendra Singh, the Collector, Khagaria
5. Shri J Sardar, the Additional Collector, Kkhagria, District Khagaria
6. Chittanjan Choudhary, the Circle Officer, Parbatta, District Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ambuj Nayan Choubey

For the Respondent/s : Mr. Manishi Dhari Singh

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 09-11-2017

Inter alia, contending that an order passed by this Court on 23.06.2010 in CWJC No. 6966 of 2010 has not been complied with this application has been filed for initiating action for contempt.

It was the case of the petitioner before the Writ Court that his land situated in Mouza Rahimpur in Parbatta Anchal, appertaining to Touzi No. 525, Khata No. 38, Khesra No. 48, measuring 1 acre and 9 decimals have been taken over by the State Government due to unprecedented flood that took place in River Ganga in the year 1976 causing erosion of 11/12 kilometers around the area. Consequently, thousands of people were rendered homeless. They had to be evacuated and for rehabilitation of the flood victims the land has been



taken over. Petitioner was paid ground rent initially but now even ground rent is stopped to be paid and no compensation has been paid.

Taking note of the aforesaid grievance of the petitioner it is seen that the learned Writ Court without going into various disputed aspects of the matter, thought it proper to issue a direction to the State Government through the Collector, Khagaria, to initiate steps for fixing the rent for the period the area in question was utilized and thereafter to start a land acquisition proceeding in case the Government intends to permanently utilize the land. It was further held that in case the Government if wished to permanently take over the land, the land may be vacated and fix the rent for the period and pay to the petitioner.

From the counter affidavits, rejoinder and other materials that have come on record during the course of hearing it was found that the Collector, Khagaria, admitted about acquisition of 1 acre of land and settlement of compensation with regard to the same. With regard to 0.9 acre, it was the case of the State Government that the same has not been acquired. After the orders were passed on 01.05.2014 the matter was being contested and finally the Collector, Khagaria was directed to look into the matter personally, The Collector clarified the portion and the petitioner referring to various documents started raising counter claim by contesting that apart from 1 acre, 0.9 acre of land was also acquired. It is said that compensation



has only paid for 1 acre of land and for the remaining 0.9 decimal nothing has been paid. Certain contrary statements in the counter affidavit of the State Government was also pointed out to this Court on 21.06.2017.

Taking note of all these aspects of the matter, this Court on 21.06.2017 found that with regard to 0.9 decimal of land after orders were passed there is no specific or cogent reply from the respondents. The Collector, therefore, was directed to look into the matter personally and file a detailed affidavit sworn by the Collector himself with regard to this issue.

In pursuance to the same, on 04.08.2017 the Collector, Khagaria himself filed the affidavit and on a perusal of the same it is seen that with a view to clarify the entire position, Shri Jai Singh, Collector, Khagaria has filed the counter affidavit and he says that the land was utilized for the purpose of constructing a Community Hall. It is stated that after taking note the various aspects of the matter and enquiry conducted by the District Land Acquisition Officer, Khagaria after approval of the competent authority at that point of time only 1 acre of land has been acquired and it is detailed in paragraph 8 as to how and what manner the acquisition took place. It is categorically stated by the Collector that after being satisfied from the record that only 1 acre was acquired for the purpose as is detailed in paragraph 7 ,i.e. 8.20 decimals used for the basic infrastructure of the Community



Hall and Anganwari Centre, 10 decimals for P.C.C. road, 81.80 decimals for rehabilitation of twenty families the land acquired is only 100 decimals which comes to 1 acre. It is stated that in pursuance of the order passed by this Court, Collector has got the area again measured and from Annexure-A has been submitted which is dated 26.07.2017 along with the map and it is seen that again on inspection and measurement it is found that only 1 acre has been acquired and the award passed as already been brought on record which goes to show that for the acquisition of land compensation has been awarded. Even though the petitioner has filed a rejoinder refuting the condition and goes to say that even .09 decimals has been acquired but the from detailed affidavit filed by the Collector with the inspection report filed thereto as Annexure-A and the proceeding of the Land Acquisition authorities Annexure-C this Court finds that there is serious dispute between the parties with regard to the issue in question. The Collector has produced evidence based on measurement done by the competent authority to show that only 1 acre of land is acquired which the petitioner is refuting as aforesaid.

This is a proceeding for contempt and if the order passed in the writ petition is taken note, there is no specific finding available in the order passed in the writ petition, after analyzing the facts on record to hold that land acquired was 1.09 acres. On the contrary, reference made in the order to 1 acre 09 decimals is not a finding



after enquiry but it is only a reference made by the petitioner in the writ petition. In fact, the learned Writ Court has not conducted any enquiry with regard to the actual area acquired. By taking note of the contention of the petitioner, the petition was disposed off without causing any enquiry as to what is the actual area which has been acquired and for which compensation is to be granted. That being the actual position, now exercising limited jurisdiction available to this Court in a contempt proceeding and in the backdrop of the aforesaid dispute that has come on record as detailed hereinabove, and the averments which are contrary in nature, the question is as to whether this Court can enter into this area of dispute in these proceedings for contempt and initiate action.

It is well settled principle of law that contempt action is taken for willful disobedience and violation of a Court's order. When there are disputes with regard to the rights and liabilities of the parties, and when these disputes are not adjudicated upon, in a contempt proceeding this Court cannot adjudicate the disputes and proceed to determine the issue as if it is exercising its original jurisdiction to adjudicate the dispute. This Court can only consider as to whether an order passed is being willfully breached or disobeyed or directions issued not complied with.

In the facts and circumstances of the case, the position does not show that there is any willful disobedience or breach of the



order passed by the learned Writ Court. The direction was to pay compensation for the land acquired without adjudicating any claim as to what is the actual area of land or at what rate compensation should be awarded or the rent paid. Everything was left to the State Government through the Collector to be decided. If after following a reasonable procedure, conducting inspection and submitting report action has been taken by the Collector this Court in this proceeding cannot sit over the decision and report of the administrative authorities and exercise any further appellate jurisdiction on the basis of the dispute raised by the petitioner. It is rather beyond the jurisdiction of this Court in the contempt proceeding and, therefore, now in the facts and circumstances that have come on record, particularly after the report submitted on affidavit of the Collector himself which is based on physical verification of land in question, I see no reason to keep the matter pending.

If the petitioner has any grievance with regard to the manner in which the inspection is conducted, the report submitted or measurement undertaken which are not according to him, in accordance with law, he may challenge the same, get it adjudicated in an appropriate forum before an appropriate authority or a court of competent jurisdiction. In these is proceedings, now in the light of the compliance made by the respondent with regard to payment of compensation for the area which is said to have been acquired by



them no further indulgence is called for. it is now for the petitioner to challenge the action of denying him the compensation for 0.9 decimals by initiating proceeding in accordance with law wherein the issue can be well adjudicated.

Accordingly, with these findings this application is disposed of with an observation that this Court has not gone into the merits of the dispute now between the parties with regard to 0.9 decimals of land. Nothing in this order shall be construed to mean this Court has gone into this dispute. It is always open for the petitioner to challenge the same in an appropriate proceeding.

With the aforesaid, this application is disposed of.

(Rajendra Menon, CJ)

mrl./-

AFR/NAFR	NAFR
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