

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19056 of 2014

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1. Munna Shankar Singh, S/o Late Brahma Singh @ Brahmdeo Singh, Resident of Village- Sakhara, P.S. Dehri, District Rohtas.
 2. Munni Devi, D/o Late Gauri Shankar Singh, Wife of- Ramendra Kumar Singh
 3. Rinki Devi, Daughter of- Late Gauri Shankar Singh, W/o Dharmendra Singh
- Both Sl. No. 2 and 3 are Resident of Village Tilui, P.S. Sanjhauli, District - Rohtas.

.... Petitioners

Versus

1. The State of Bihar.
2. The District Magistrate Rohtas at Sasaram, P.O. and P.S. Sasaram, District Rohtas.
3. The District Land Acquisition Officer cum Competent Authority Rohtas at Sasaram, P.O. and P.S. Sasaram, District Rohtas.
4. The Project Director, National Highway Authority, Maqbul Alam Road, D.I.G. Colony, Varanasi (U.P.).
5. Md. Jamil S/o Late Md. Khalil
6. Gopal Sharma S/o Late Ram Prasad Sharma

Sl. No. 5 to 7 are resident of Village Sakhara, P.S. Dehri, District Rohtas.

.... Respondents

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Appearance:

For the Petitioners : Mr. K. N. Chaubey, Senior Advocate
Mr. Akhouri Vipin Bihari Shrivastava, Advocate

For the State : Mr. P.N. Jha, A.C. to Advocate General

For the Private Respondents: Mr. Md. Khurshid Alam, Adv.
Mr. Md. Naseem Mukhtar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 14-09-2017

Heard leaned counsel appearing for the respective parties.



2. In the present case, short question has been raised that whether the District Land Acquisition Officer has jurisdiction to decide the issue of apportionment as in the present case the petitioners and the private respondents are fighting tooth and nail with respect to entitlement of amount of award.

3. As per the claim of the petitioners their lands were acquired for widening and construction of NH-2, for which award no.29 has been prepared in the names of Md. Jamil, son of Md. Khalil, Shivkali Devi, wife of Late Ram Prasad Sharma, Brahmdeo Rai, Gauri Shankar Rai, Vindhachal Rai, Santosh Singh, son of Vishnudeo Singh. The claim has been made by Md. Jamil that his father Md. Khalil and brothers of Md. Khalil purchased the land, in question, vide sale deed no.6355 dated 25.06.1964 and accordingly, they came in possession. From the old Plot No.149 two new plots were carved out; one Plot No.149 area 6 decimal and second, Plot No.2041 area 2 decimal. Partition took place in the family on 30.05.2001 and Plot No.149, Khata No.341 area 3 khatha was allotted to the father of Md. Jamil. After his death, both the sons have inherited the said land.

4. The said land was mutated vide Mutation Case No.36/6-8/74-75 in the name of Md. Jamil and accordingly, the



name of Md. Jamil was recorded in the mutation on the basis of the judgment passed in Title Suit No.161/76 of 1964-65, by the Sub Judge, Sasaram. As per the respondent, the decree was executed in the year 1967 and they came in possession, have been getting the rent receipt and it has been mentioned that he filed rent receipt dated 24.01.2013 of 8 decimal, but the District Land Acquisition Officer, on the basis of decree, directed for preparation of award with respect to 6 decimal of land as the land decided in Title suit No.161/76 of 1964-65. The Land Acquisition Officer, ultimately directed preparation of award for 6 decimal of land in favour of Jamil and award of 6 decimal in favour of Gopal Sharma, son of Late Ram Prasad Sharma.

5. The petitioners submit that the judgment and decree was never acted upon and the judgment and decree remained a paper decree, they all along remained in possession and the Sub Divisional Officer in 145 Cr.P.C. proceeding (Annexure-4), in the year 2016, has found the possession of the petitioners inasmuch as learned counsel for the petitioners submits that they have received compensation of the houses, which has been disputed by the learned counsel for the other side. Further, a Title Suit No.209 of 2004 has been filed by Gopal Sharma, Niraj Sharma and Dhiraj Sharma,



claiming title and possession over the property, which is still pending, but other side has disputed the statement of pendency of case.

6. In this case, two issues have been raised by the petitioners; first they were not given hearing with respect to their objection which they have filed before the Land Acquisition Officer and second, in the event the objection with respect to the apportionment of quantum of compensation, the matter has to be referred to the Principal Civil Court in terms of Section 3-H(4) of the National Highways Act, 1956.

7. It is an admitted fact that the judgment and decree has not been set aside and title suit No.209 of 2004 has already been dismissed for default. The entry in the revenue record does not create any right or extinguish any right and the declaration, which has been made by the Civil Court, will prevail over the entry in the revenue records. However, the learned counsel for the petitioners has raised grievance with respect to their apportionment. The Land Acquisition Officer, as per section 3-H (4) does not have jurisdiction to adjudicate the lis, rather jurisdiction lies to the competent authority.

8. In such view of the matter, let the matter be referred to



the Principal Civil Court in terms of the Section 3-H (4) of the National Highways Act, 1956 for deciding the matter with respect to apportionment. While examining the matter, the Court below will take into consideration the judgment and decree passed in Title Suit No.161/76 of 1964-65 as well as entry made in the revenue records.

9. Any payment to any party will be made on furnishing the indemnity bound with the condition on success of other side he will return and pay the amount along with interest.

10. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.09.2017
Transmission Date	N/A

