

IN THE HIGH COURT OF JUDICATURE AT PATNA

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

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

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Appearance :

For the Petitioners : Mr. P.K. Shahi, Sr. Adv.
Mr. Vikas Kumar, Adv.

For the State : Mr. Chittaranjan Sinha, Sr. Adv., PAAG-2
Mr. Vikash Kumar, Adv. S.C. 11

For Patna University Mr. Vivekanand Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
CAV JUDGMENT
Date: 22-06-2017**

1. This petition under Article 226 of Constitution of India
has been filed for issuance of a declaration that the land acquisition
proceeding arising out of L.A. Case No. 78 of 1958-59 and L.A. Case
No. 63 of 1959-60 have lapsed in view of Section 24(2) of Right to
Fair Compensation and Transparency in Land Acquisition,
Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as



“the Act 2013”) and also for quashing the encroachment notices as contained in Annexure-1 series to the writ application issued by the Circle Officer, Patna Sadar, Patna in Encroachment Case No. 03 of 2016-17 and also for issuance of declaration that petitioners are no more encroachers of the lands in question.

2. The brief facts of the present matter is that somewhere in the year 1950, on the request of Patna University, Patna, the District Administration started land acquisition proceeding of land measuring 1.939 acre and 0.707 acre of Golakpur Mohalla district Patna vide L.A. Case No. 78 of 1958-59 and L.A. Case No. 63 of 1959-60 for expansion of Bihar Engineering College (NIT), Patna. A declaration under Section 6 of Land Acquisition Act vide notification no. 11671/R dated 13.11.1958 was published in Bihar Gazette dated 19.12.1958 in respect of L.A. Case No. 78 of 1958-59. The award of the aforesaid proceeding was prepared and declared on 01.10.1964 and out of thirty awardees, twenty eight awardees were paid compensation amount and so far as remaining two awardees are concerned, they are said to be Patna Municipal Corporation as well as State of Bihar. Again an acquisition proceeding vide L.A. Case No. 63 of 1959-60 for acquisition of 0.73 acre land was initiated and a declaration under Section 6 of Land Acquisition Act vide no. 11207/R dated 23.11.1959 was published in Bihar Gazette dated 23.12.1959



but subsequently, 0.027 acre land were released and thereafter, award for 0.707 acre land was declared on 16.07.1962 and out of twenty four awardees, twenty two awardees were paid compensation amount and the remaining two awardees are Patna Municipal Corporation as well as State of Bihar, whose compensation amount was deposited in government treasury in their respective heads. The possession of some portion of acquired land was taken over whereas possession regarding remaining portion of land could not be taken over due to prolong litigation. However, it is not out of place to mention here that the land owners being not satisfied with the compensation amount approached the competent court which enhanced the compensation amount under Section 18 of the Land Acquisition Act. Thereafter, several first appeals were preferred by the State Government before this Court and vide order dated 18.10.1979 this court partly allowed the above stated appeals and modified the compensation amount but the differential amount was never paid by the State Government to the land owners of the acquired lands. However, at para-7 of rejoinder dated 20.07.2016 petitioners averred that petitioner no. 7, namely, Bhushan Lal and petitioner no. 11, namely, S. Muntazir Abbas did not receive any compensation amount and similarly, at para-10 of the aforesaid rejoinder, it has been pleaded by the petitioners that ancestors of petitioners no. 12 to 16 as well as other beneficiaries of L.A. Case No.



63 of 1959-60 received the compensation amount under protest and subsequently, the learned Special Land Acquisition Judge, 1st, Patna enhanced the compensation amount which was challenged before this court but the challenge of the State in respect of enhancement of the compensation amount was failed up to this court and even then the State Government did not make payment of differential amount which was enhanced by the learned Special Land Acquisition Judge, 1st, Patna vide award dated 29.07.1967.

3. The petitioners have based their case on the ground that neither the full compensation amount was paid to them nor possession of the acquired land was taken over by the State Government and, therefore, in view of Section 24(2) of the Act 2013, the entire acquisition proceeding in respect of the lands of petitioners has already lapsed.

4. It is pertinent to mention here that one Public Interest Litigation bearing C.W.J.C. No. 7284 of 2015 was filed in this court for removal of encroachment from the premises of Patna University. It is an admitted position that premises of Patna University includes the acquired land of the present matter though petitioners have challenged that they were never dispossessed from the lands in question which are said to be acquired by the Land Acquisition Case No. 78 of 1958-59 and Land Acquisition Case No. 63 of 1959-60. It is also pertinent



to note here that a Division Bench of this court took serious note of unauthorized encroachment of the premises of the Patna University and time to time gave several directions/orders to concerned authorities for removal of encroachment of unauthorized persons from the premises of Patna University and while hearing the aforesaid Public Interest Litigation, a Division Bench of this court vide order dated 11.05.2015 restrained the other agencies including court to entertain the petition or suit regarding the dispute of premises of Patna University. However, subsequently, the same Division Bench of this court vide order dated 29.06.2015 modified the order dated 11.05.2015 to this extent that direction issued vide order dated 11.05.2015 in C.W.J.C. No. 7284 of 2015 was only in respect of the land owned by the University and if there was dispute regarding the identification or demarcation, the effected person can approach the District Magistrate, who in his turn, shall get the same decided by the survey department and furthermore, if any of the petitioners hold valid title of the land in respect of their occupation, they can approach the competent civil court by producing relevant title deeds. Some modifications were also made vide order dated 29.06.2015 but the said modifications are not relevant for disposal of the present writ petition and, therefore, the aforesaid modifications are not being mentioned in this order.



5. It is an admitted position that under the monitoring of aforesaid Division Bench of this court, the local Administration initiated an encroachment proceeding vide Encroachment Case No. 03 of 2016-17 and issued show cause notices to petitioners and some others for their ejection from the lands in question as well as from other lands of Patna University.

6. Learned counsel appearing for the petitioners submits that the lands in question belong to forefathers (ancestors) of the petitioners and it is admitted position that differential compensation amount, which was enhanced in a legal proceeding, was never paid either to ancestors of the petitioners or to the petitioners and furthermore, it is also obvious from the materials available on the record including Annexure-1 series (show cause notices issued under Encroachment Case No. 03 of 2016-17) to the writ petition that petitioners are coming in possession of their respective lands since long and the lands of the petitioners though acquired but neither the State Government nor the Patna University could succeed to take possession of the lands in question. He further submitted that the Act 2013 came into force with effect from 26.09.2013 and Section 24(2) of the Act 2013 says that:-

“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.

7. Learned counsel for the petitioners further submits that in the present case even if it assumed that part compensation amount was paid to the ancestors of the petitioners then also, it is obvious from the materials available on the record that physical possession of the lands in question was never taken over by the respondents and, therefore, in view of the aforesaid provision, the proceedings of L.A. Case No. 63 of 1959-60 and L.A. Case No. 78 of 1958-59 have already lapsed. Learned counsel for the petitioners relied upon decision of **Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others** reported in (2014) 3



SCC, 183, decision of **Aligarh Development Authority vs. Megh Singh and others** reported in 2016(3) PLJR (SC) 93 and decision of **Rajiv Chowdhrie HUF vs. Union of India and others** reported in 2015(2) PLJR (SC) 302 and on the strength of aforesaid decisions as well as Section 24(2) of the Act 2013, sought indulgence of this court for declaration of the proceedings of aforesaid land acquisition cases as lapsed.

8. On the other hand, learned counsels appearing for the State as well as Patna University refuted the submissions of learned counsel for the petitioners arguing that admittedly, petitioners were not party to the aforesaid land acquisition proceedings and they claim that aforesaid land acquisition proceedings were initiated against their ancestors but there is nothing on the record to show that petitioners are legal heirs of the original awardees and, therefore, the aforesaid disputed fact cannot be decided in this writ petition. Learned counsels for the respondents further submit that if the petitioners claim their right and title in respect of the acquired land, they may file regular civil suit before competent court. However, learned counsels for the respondents further submit that admittedly, the amount, which was determined in award by the competent court, have already been paid to the land owners of acquired land and some of the owners also vacated their possession and handed over the same to the concerned



authorities whereas some land owners assured to give vacant possession of the acquired lands but subsequently, they got stay order and refused to vacate the possession of acquired lands. They further submit that as a matter of fact, when on the basis of direction given by Division Bench of this court in C.W.J.C. No. 7284 of 2015, encroachment case was registered and show cause notices were issued against the petitioners for removal of their illegal encroachment from the acquired land, petitioners have filed this writ petition challenging the order of removal of their illegal encroachment from the suit premises in guise of challenging the validity of L.A. Case No. 78 of 1958-59 and L.A. Case No. 63 of 1959-60 and, therefore, in view of the observation/direction made by the Division Bench of this court in C.W.J.C. No. 7284 of 2015, this writ petition is not maintainable and liable to be dismissed.

9. Having heard the rival contentions of both the parties, I have gone through the record. Admittedly, petitioners are not original awardees of L.A. Case No. 78 of 1958-59 and L.A. Case No. 63 of 1959-60 and they claim that original awardees of L.A. Case No. 78 of 1958-59 and L.A. Case No. 63 of 1959-60 were their respective ancestors. It is obvious from the documents available on the record that original awardees had already got entire original compensation amount as determined by the competent authority though there is



nothing on the record to show that differential amount as enhanced by the court was ever paid either to original awardees or to their legal heirs. Furthermore, there is nothing on the record to show that any step was taken by the original awardees to recover the differential amount of compensation from the concerned authorities though the order for enhancement of compensation amount was passed by this court in the year 1979. No doubt, Section 24(2) of the Act 2013 says that **“If an award under Section 11 of L.A. Act, 1894 has been made five years or more prior to commencement of Act 2013 and the physical possession of the land has not been taken or the compensation has not been paid, the acquisition proceeding initiated under L.A. Act, 1894 shall be deemed to have lapsed.”** The proviso of aforesaid Section 24(2) of the Act 2013 goes to show 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 the Act 2013.”**

10. The bare perusal of Section 24(2) of the Act 2013 goes to show that failure of taking physical possession of the acquired land or failure to make payment of compensation in respect of an award which has been prepared five years or more prior to the commencement of Act 2013 shall give effect of lapse of the



acquisition proceeding.

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.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	25.01.2017
Uploading Date	24.06.2017
Transmission Date	

