

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14367 of 2014

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1. Mithilesh Kumar Singh
 2. Raj Banshi Singh
 3. Raj Kumar Singh
 All sons of S/o late Ram Pravesh Singh
 Resident of village + P.O. Kotheyan, P.S. Jalalpur, District - Saran

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Board of Revenue, Old Secretariat, Patna
 2. The Collector, Saran, Saran District at Chapra, P.O. + P.S. + Distt. - Saran at Chapra
 3. Land Acquisition Officer, District Saran, P.O. + P.S. + District - Saran at Chapra
 4. Rajeshwar Singh S/o late Jai Prakash Singh
 5. Chandeshwar Singh S/o Ditto
 6. Shiveshwar Singh S/o Ditto
 7. Harikeshwar Singh @ Harishankar Singh S/o Ditto
 8. Wakil Singh @ Wakil Kumar Singh S/o Ditto
 9. Tetra Devi D/o Ditto
 10. Naina Devi D/o Ditto
 All resident of village + P.O. Kotheyan, P.S. Jalalpur, District - Saran

.... Respondent/s

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Appearance :

For the Petitioner/s : Dr. Ansuman
 Mr. Kuber Pathak
 For the Respondent/s : Mr. Amit Kumar Jha, AC to AAG 4

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

- 02 14.09.2017 1. Counter affidavit is filed on behalf of the respondent nos.2 and 3.
2. Heard learned counsel for the petitioners as well as learned counsel for the State.
3. With the consent of both parties, this petition is being disposed of at the admission stage



itself.

4. Petitioners have prayed for issuance of direction to respondent nos.1 and 2 to pay compensation amount for half share of the lands situated in village Kothayan P.S. Jalalpur district Saran in respect of plot nos. 1978, 1987 and 1994 of khata no. 502 which were acquired vide notification no. 14/D.L.A- Saran (I.T.B.P)09/2013 dated 9.4.2013 to them.

5. Admittedly, the aforesaid lands were acquired and award was prepared. The petitioners claimed half share in the aforesaid acquired lands and accordingly, they also claimed compensation in proportionate to their share but Land Acquisition officer, Saran at Chapra rejected the claim of the petitioners passing the order dated 16.8.2014. Petitioners on 21.8.2014 filed this writ petition seeking the above stated relief.

6. Annexure 3 to the writ petition goes to show that vide notification dated 9.4.2013 State Governments intended to acquire several lands including lands of the petitioners and admittedly, the aforesaid notification



dated 9.4.2013 was made under Land Acquisition Act, 1894. However, it is stated that award was prepared but it is not clear either from the pleadings of the writ petition or from the counter affidavit as to when the aforesaid award was published. It is admitted position that Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 came in force from 01.01.2014 and section 24 of the above stated Act says that if any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 and in the aforesaid proceeding, award under section 11 of the Act, 1894 has not been prepared the provision of new Act, 2013 shall be applicable for determination of compensation but if an award has already been prepared under section 11 of the Act, 1894 then, in that event, proceeding shall continue under the provision of Land Acquisition Act, 1894.

7. Annexure A to the counter affidavit goes to show that claim of the petitioners was rejected by Land Acquisition officer, Saran at Chapra on 16.8.2014 i.e. after commencement of Act, 2013.



8. Section 64 of the Act, 2013 says that any person interested who has not accepted the award may, by written application to the Collector, require that matter be referred by the Collector for the determination of the authority, as the case may be, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement or the apportionment of the compensation among the persons interested. Furthermore, the aforesaid section says that written application shall be filed within six weeks from the date of the Award, if at the time of passing award said person is present and in any case, within six weeks of the receipt of the notice from the Collector under section 21 or within six months from the date of the Collector's award, whichever period shall first expire. However, Collector may entertain an application even after expiry of the above stated period within further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.

9. In the present case, petitioners are aggrieved



by the order of Land Acquisition officer, Saran at Chapra who has rejected the claim of the petitioners and admittedly, within a month of Land Acquisition officer, Saran at Chapra, the petitioners preferred this writ petition before this court.

10. Although the petitioners ought to have challenged the order of Land Acquisition officer, Saran at Chapra before the concerned authority by filing written application to the Collector requesting him to refer the matter to the authority but the petitioners chose to file this writ petition. In my view, when alternative remedy is available to the petitioners, they must seek the aforesaid alternative remedy before appropriate forum.

11. Therefore, on the basis of the aforesaid discussions, this writ petition stands disposed of giving liberty to the petitioners to make written application before the Collector, Saran at Chapra within six weeks from today and if Collector finds that the petitioners' claim should be referred to the authority under the Act, 2013, the Collector shall refer the claim of the petitioners to the concerned authority within the period



prescribed in the aforesaid section 64 of Act, 2013 but if Collector finds that case of the petitioners is not covered by the Act, 2013 because prior to commencement of Act, 2013 award had already been prepared, then in that event, Collector shall proceed and pass order in accordance with old Act, 1894.

Shahid

(Hemant Kumar Srivastava, J)

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