

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.184 of 2016

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Priya Ranjana Panjiyar Gupta, wife of Late Nageshwar Prasad Gupta, permanent resident of Village Matiyara Tok, P.S. Sarai, District Vaishali, presently residing at C/o. Shri Chandra Mohan Prasad (Retd. IAS), State Bank of India Campus, Kurji More, Patna – 800 010.

.... Petitioner

Versus

1. Sanjay Kumar, son of Satya Narayan Sah, resident of Quarter No. 22, Road No. 8, Shrikrishna Nagar, P.S. Shrikrishna Nagar, District Patna.
2. The State of Bihar
3. The Collector, Vaishali at Hajipur
4. The Certificate Officer, Hajipur, District Vaishali,

.... Opposite Parties

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Appearance:

For the Petitioner: Mr. Nand Kishore Singh, Advocate
Mr. Jitendra Kumar, Advocate
Mr. Shashank Shekhar, Advocate
For the State : Mrs. Nutan Sahay, AC to AAG 12.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

C.A.V. JUDGMENT

Date: 22.03.2017

The present petition has been filed for review of the judgment dated 07.12.2015, passed in CWJC No. 311 of 2014 whereby, *inter alia*, the notice dated 24.06.2013 issued under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 (for short “the PDR Act”) was quashed and the entire certificate proceeding against the writ petitioner was set aside.

2. According to the review petitioner, land appertaining to Khata No. 125, part of plot No. 189 situated at Mauza Matiyara Tok, P.S. Sarai, District Vaishali at Hajipur measuring about 13 decimals was purchased by her husband Nageshwar Prasad Gupta through four



registered sale deeds from his own earnings and income, upon which he constructed a double story residential and commercial building. In the year 2009-10, pursuant to State Government Notification u/s 4 of the Land Acquisition Act, *inter alia*, the land in question was notified for acquisition. Nageshwar Prasad Gupta subsequently died in April 2013 leaving behind his widow, the review petitioner, whose name was mutated in the record of rights. An award No. 28/A was prepared for compensation of land for Rs. 2,37,968/- and award No. 88 for building for Rs. 28,50,913/- (total Rs. 30,88,931/-). The nephew of the deceased, Sanjay Kumar (O.P. No. 1/writ petitioner), however, received the entire award money on the basis of forged documents.

3. Consequent upon death of Nageshwar Prasad Gupta and delivery of the award money, his widow Priya Ranjana Panjiar Gupta (the review petitioner/Respondent No. 8) made an application to the District Land Acquisition Officer, Vaishali for a direction to the writ petitioner to refund the said amount to her. The District Land Acquisition Officer initiated a proceeding under the PDR Act which was challenged in the writ petition mainly on the ground that resort to recovery proceedings under the PDR Act could not be sustained in view of the provisions of Section 30 of the Land Acquisition Act, 1894 which required a reference of the dispute to the Court.

4. Mr. Nand Kishore Singh, learned counsel appearing on behalf of the review petitioner submits that the facts could not be



placed in proper perspective at the time of hearing of the writ petition as the review petitioner could not be present at the relevant time owing to unavoidable circumstances. However, a counter affidavit had duly been filed bringing on record various documents, to which attention of the Court could not be drawn.

Mr. Nand Kishore Singh refers to an affidavit said to have been sworn by Nageshwar Prasad Gupta giving his no objection to payment of the award money to the writ petitioner, but the same has not been signed by the deponent at all.

He further invites attention to the order dated 22.07.2013 passed by the District Land Acquisition Officer, Vaishali in Case No. 01/2013 which was disposed of after hearing the writ petitioner as well as the review petitioner. The written statement filed by the writ petitioner in Partition Suit No. 398 of 1998/136 of 1998 has been taken note of, wherein it was accepted that the land in question was a self acquired property of Nageshwar Prasad Gupta.

More significantly, in the bond-cum-consent letter of the writ petitioner, it was clearly stated that he would refund the entire compensation amount in case of any dispute, which however, was not refunded despite notice. Accordingly, a certificate case was directed to be initiated upon failure to deposit the compensation amount received by the writ petitioner.

A Complaint Case No. 158 of 2013 was also filed by the



District Land Acquisition Officer, Vaishali before the Chief Judicial Magistrate, Vaishali in connection with the compensation amount allegedly received by the writ petitioner by committing fraud.

It would further transpire from the order dated 25.07.2014 passed by the Certificate Officer, Vaishali at Hajipur in Certificate Case No. 12/2013-14 that the writ petitioner's objection petition under Section 9 of the PDR Act was also rejected.

5. Notice was issued to the O.P. No. 1/writ petitioner which was validly served and who also entered appearance. None was however present on his behalf either yesterday or even today when the matter was called.

6. It is evident from the records that even though the review petitioner was not present at the time of disposal of the writ petition, a counter affidavit on her behalf had been filed which was found on record, but was not taken note of. As a result, the order dated 22.07.2013 passed by the District Land Acquisition Officer, Vaishali, the Complaint Case dated 22.11.2013 bearing No. 158 of 2013 filed by him, as well as the order dated 25.07.2014 passed by the Certificate Officer rejecting the writ petitioner's objection petition under Section 9 of the PDR Act, were all missed to be taken note of and considered. So also the undertaking of the writ petitioner in terms of his bond-cum-consent letter to refund the compensation amount in case of dispute was not taken into consideration by this Court while passing the order



under review.

7. In the above circumstances, this Court is satisfied that there is an error apparent on the face of the record and the matter requires reconsideration. The judgment dated 07.12.2015 passed by this Court in CWJC No. 311 of 2014 is accordingly recalled.

8. Let the matter therefore, be listed before the appropriate Bench according to subject roster in due course.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	07.02.2017
Uploading Date	23.03.2017
Transmission Date	N.A.

