

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18556 of 2013

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1. Sudhir Singh, Son Of Late Ram Bahadur Singh, Resident of Village - Malhipur, P.O. - Barauni Thermal Power Station , P.S. - Barauni (O.P. - Chakia), District - Begusarai
 2. Ajay Kumar Singh, Son of Sri Kamleshwari Singh, Resident Of Village - Malhipur, P.O. - Barauni Thermal Power Station , P.S. - Barauni (O.P. - Chakia), District - Begusarai

.... Petitioners

Versus

1. The State Of Bihar through Collector, Begusarai
2. The Collector, Begusarai
3. The Land Acquisition Officer, Begusarai
4. The District Agriculture Officer, Begusarai
5. The Chairman-Cum-M.D. Bihar State Power Holding Company Ltd, Formally Known As Bihar State Electricity Board, Vidhut Bhawan, Bailey Road, Patna
6. The Managing Director, Bihar State Power Generation Company Limited, Vidhut Bhawan, Bailey Road, Patna
7. The General Manager-Cum-Chief Engineer, Barauni Thermal Power Station, Begusarai
8. The Superintending Engineer, Barauni Thermal Power Station, Begusarai
9. The Executive Engineer, Barauni Thermal Power Station, Begusarai

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Mrigank Mauli, Advocate Mr. Rakesh Kumar Sharma, Advocate Mr. Prince Kumar Mishra, Advocate Mr. Sanket, Advocate
For the State	:	Mr. Krishna Chandra, AC to AG
For Power Holding Corporation:		Mr. Vinay Kirti Singh,, Sr. Advocate Mr. Akhileshwar Singh, Advocate Mr. Vijay Kumar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 18-01-2017

Heard learned counsel for the parties.

The challenge in the present writ application is to the order
dated 26.6.2013 passed by the Chief Engineer, Barauni Thermal



Power Station, Begusarai by which the representation filed by the petitioners on 15.4.2013 has been rejected.

Further prayer is to pay compensation to the petitioners for the damage suffered to the fertile land due to waste water and ash discharge by the Barauni Thermal Power Station, Begusarai from the year 1989 till date.

Petitioners' lands are located in the vicinity of Barauni Thermal Power Station, Begusarai. Due to the effluence of fly ash, both in the air and through water, some adjoining lands of the Barauni Thermal Power Station, Begusarai got affected in the year 1989, for which compensation was also paid. Thereafter, it appears that with regard to dispute in the year 1990-91, as no payment was made, the petitioners approached this Court in C.W.J.C.No. 9779 of 2012, which was disposed off by order dated 19.3.2013 on the basis of submission of the learned counsel for the petitioners that they would file a representation, and it was directed that if such representation was filed, the same shall be considered and disposed off by a reasoned order in accordance with law. Pursuant to the same, the matter was considered and rejected by the impugned order.

At the very outset, learned counsel for the Bihar State Power Generation Company Limited raised a preliminary objection and submitted that the cause of action of the petitioners relates to the



year 1990 and though they had approached this Court initially in the year 2012 and subsequently in the present writ application, the writ petition should be dismissed on the ground of delay and laches. He further submitted that the impugned order is heavily based on facts of the nature which cannot be decided in a writ petition, inasmuch as, it has been held that due to the petitioners and other farmers being interested in the water for irrigating their fields, had themselves cut the fly ash boundary, which resulted in whatever may have happened on their land, but for which the Company cannot be made to pay any compensation. He submitted that such facts cannot be adjudicated in the present writ application as the order impugned itself discloses that with regard to such fact, a communication had been made in November, 1991 itself, which shows that it was a contemporaneous communication and now, after 25 years, such finding cannot be disputed, and that too, in a writ application under Article 226 of the Constitution of India.

Learned counsel for the petitioners submitted that the dismissal of a writ application on delay and laches has to be judged on the facts and circumstances of a particular case and there is no uniform formula for the same, and in cases where the Court finds that the hardship caused to the petitioners shocks the conscience of the Court, interference is required and even normally, delay should be



condoned in the facts and circumstances of the present case, as the cause of action survives. For such proposition, he has relied upon the decision of the Hon'ble Supreme Court in the case of **Hindustan Petroleum Corporation Ltd. Vs. Dolly Das**, reported as **(1999) 4 Supreme Court Cases 450**, the relevant being at paragraph no. 8 as also in the case of **Tukaram Kana Joshi Vs. MIDC**, reported as **(2013) 1 Supreme Court Cases 353**, the relevant being at paragraphs no.12, 13 and 14. He further submitted that in the present case, the authorities have not paid the compensation for long, which was required to be paid, it is a wrong committed by them, for which they cannot take undue and unfair advantage. For such proposition, he has referred to the decision of the Hon'ble Supreme Court in the case of **Kusheshwar Prasad Singh Vs. State of Bihar**, reported as **(2007) 11 Supreme Court Cases 447**, the relevant being at paragraphs no. 14 to 16 as well as the decision of a Bench of this Court in the case of **Santosh Kumar Vs. State of Bihar**, reported as **2017(1) PLJR 46**, the relevant being at paragraphs no. 5 and 6.

Learned counsel further submitted that even recently in the year 2011 in a joint inspection of the authorities, it has been found that the land of the petitioners are affected due to fly ash.

Learned counsel in this context also referred to a document which goes to show that fly ash embankment was given to a



contractor for being built in the year 1992, which also falsifies the claim of the respondents that the petitioners have broken the said embankment.

Having considered the rival contentions, this Court is not inclined to interfere in the matter. The petitioners having approached the Court in the year 2012 for a cause of action of the year 1990 and without showing any sufficient reason for not having approached the Court earlier, are not entitled for any interference by the Court and disposal of the earlier writ petition giving liberty to file representation would not mean that the delay has been condoned. Further, the conduct of the petitioners themselves, where admittedly they have not approached the Court for 22 years, cannot be said to be *bona fide* for the reason that there does not seem to be any effort or movement on the part of the petitioners to agitate their claim, if they thought it to be genuine. Moreover, in the face of what has been recorded in the order impugned, that fly ash which was found on a portion of the land of the petitioners in the survey made, was due to their own act of having broken the boundary of the ash embankment for irrigation purposes of their land, for which the matter was also conveyed to the District Magistrate, Begusarai in November, 1991 itself, cannot be gone into or adjudicated in the present proceeding. As far as the case of **Tukaram Kana Joshi** (supra) is concerned, the matter related to



acquisition of the land of those petitioners. The same situation cannot be equated to the present case as the acquisition of land relates to taking away of the property of a person and without having paid any compensation, the cause cannot be defeated as the person has finally lost his property forever. As far as the case of **Hindustan Petroleum Corporation Ltd.** (supra) is concerned, it related to the extension/ renewal of lease deed entered into between the parties and the petitioners before the Hon'ble Supreme Court had exercised the option for renewal of the lease deed for a further period, though such communication was slightly delayed. In the present case, there is no similarity to the facts and circumstances of the said case. As far as the decision of the Hon'ble Supreme Court in the case of **Kusheshwar Prasad Singh** (supra) is concerned, the order was passed in a totally different context, inasmuch as, the State authorities by not passing a formal order closing the ceiling case, after a lapse of many years had taken a decision to continue with the said ceiling case and, thus, the Hon'ble Supreme Court has held that a person cannot be permitted to take undue and unfair advantage of its own fault to get favourable interpretation of law. In the present case, the petitioners want a benefit by way of compensation from the respondents and, thus, they had to assert their right within a reasonable period of time as basically it is a money claim, for which also, under the statute, limitation of three



years is prescribed, whereas in the present case, the petitioners had approached this Court for the first time, after 22 years.

As far as the case of **Santosh Kumar** (supra) is concerned, the fact was that the panel which was appointed had to be approved by the Empowered Standing Committee and in that context the Court had held that the said approval was required to be taken by the Municipal Commissioner, by placing the matter before the Empowered Standing Committee, but he had committed default, for which others cannot be permitted to suffer. In the present case, there is no such similarity, as the claim of the petitioners itself is being denied.

As far as contention of the learned counsel for the petitioners is that there is a recent report indicating loss suffered due to fly ash, the Court may also only observe that the same is of no relevance due to the fact that if what has been asserted in the impugned order that such finding of fly ash on the land of the petitioners is due to their own conduct of breaching the fly ash embankment, they cannot claim compensation. Further, learned counsel for the Company has clarified that even the report of the year 2011, which has been referred by learned counsel for the petitioners, relates back to the year 1990. Thus, in that view of the matter also the Court finds it difficult to accept such a report after 21 years.



In view thereof, the Court does not find any ground warranting interference. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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