

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5392 of 2017

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1. Bholu Prasad Singh Son of late Raghu Singh
2. Kamdeo Jha Son of late Markandey Jha
3. Chandeshwari Singh Son of late Badri Singh
4. Ganga Paswan Son of Kanhaiya Paswan
5. Girja Devi Wife of late Shibu Kusiya All are resident of Village- Basawan Patti, P.S. Rajpur, District- Supaul.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health and Family Welfare Department, Government of Bihar, Patna.
3. The Additional Secretary, Health and Family Welfare Department, Government of Bihar, Patna.
4. The Commissioner, Koshi Division, Saharsa.
5. The Collector, Supaul.
6. The District Land Acquisition Officer, Saharsa.
7. The District Land Acquisition Officer, Supaul.
8. The Additional Collector, Revenue , Supaul.
9. The Civil Surgeon cum Chief Medical Officer, Supaul.
10. The Circle Officer, Raghupur, Supaul.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gajendra Kumar Jha, Adv
: Mr. Bam Bahadur Jha, Adv
For the Respondent/s : Mr. Aditya Nath Jha, A.C. to SC18

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 14-09-2018

Heard learned counsel for the parties.

2. The petitioners have filed this application under Article 226 of the Constitution of India for issuance of mandamus against the respondents to return back Plot No.42, 94, 123, 124, 93 and 90 under Khata No.21 having area of 5.07 acre in village- Basawan Patti to the petitioners for the reason



that neither any compensation was awarded to the petitioners nor the acquisition proceeding reached its finality.

3. There is no dispute that the aforesaid land belongs to the petitioners and the same was notified for acquisition on 15.07.1983 vide notification at Annexure-2 to the writ application. Respondent Nos.5 and 7, the Collector Supaul and the District Land Acquisition Officer, Supaul have admitted that notification for acquisition of the above land was published but neither declaration was made for acquisition of the land nor the declaration of award was made for the proposed land. However, possession was taken over and referral hospital was constructed thereon with administrative sanction of the competent authority. The District Magistrate, Supaul made correspondence with the Principal Secretary of the Health Department for whose purpose, land was acquired, for issuance of guidelines and direction to the Civil Surgeon, Supaul either to initiate proceeding for acquisition of the land of the lapsed scheme or to close this scheme so that counter affidavit may be submitted before this Court. The letter is dated 02.04.2018 at Annexure-R/1. The Health Department, Government of Bihar, in response to the aforesaid letter, informed to the District Magistrate to take appropriate decision at his own level for the reason that the referral hospital constructed on the land of the petitioners is no more needed in view of another Primary Health



Centre situated at Pratapganj Block. The said letter is Annexure-R. Thereafter, the District Magistrate, Supaul made correspondence with the Principal Secretary of the Health Department for grant of sanction to dismantle the dilapidated hospital standing on the land of the petitioners vide Annexure-R. In paragraph-19 of the counter affidavit, it is vaguely stated that the respondents are going to take effective step for redressal of grievance of the petitioners.

4. The above facts of this case reveals that the above referred plots of the petitioners was notified to be acquired for a public purpose i.e. construction of a referral hospital at Basawan Patti.

5. The statement/admission of the parties further reveals that possession of the said land was taken by the respondents and a hospital was constructed thereon without deciding the compensation and preparation of award under Section 11 of the old Act. Section 16 of the Land Acquisition Act, 1894 (referred as old Act) empowers the Collector to take possession when he has made an award under Section 11 of the old Act and after taking over possession, the land shall absolutely vest in the Government free from all encumbrances. Under Section 48 of the old Act, there was provision empowering the Government to withdraw from acquisition of any land of which possession has not been taken. Sub-section 2 to Section



48 provided for determination of compensation for the damages to the land owner. Similar provision is there under Section 93 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which reads as follows:

“93. Completion of acquisition not compulsory, but compensation to be awarded when not completed-(1) *The*

appropriate Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) *Whenever the appropriate Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.”*

6. Learned counsel for the parties have referred to Section 101 also, which is being reproduced below:



“101. Return of unutilized land.-When any land acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.”

7. From perusal of the aforesaid provisions, it is evident that both the provisions are not applicable in the present facts and circumstances of this case because under Section 93, the appropriate Govt. can withdraw from acquisition of any land of which possession has not been taken. In this case, there is admission of the respondents that possession was taken and hospital was constructed thereon. Therefore, only option left with the respondents is to immediately decide just and fair compensation under the New Act 2013 in view of the provisions of Section 24 of the New Act.

8. Likewise, provision 101 is also not applicable because this is not a case that the land of the petitioners remained unutilized, it was already utilized by construction of referral hospital by the respondents.



9. Therefore, the respondents are directed to decide the compensation under the New Act and pay the same to the petitioners within three months alongwith admissible interests from the date of taking over of the possession of the land of the petitioners, failing which the respondents may face the consequences of law.

10. Accordingly, this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2018
Transmission Date	NA

