

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1453 of 2014

In
Civil Writ Jurisdiction Case No.19747 of 2013

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1. The State of Bihar through the Commissioner-cum-Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
 2. The Collector, Nalanda at Biharsharif.
 3. The District Land Acquisition Officer, Nalanda at Biharsharif.
 4. The Sub-Divisional Officer, Rajgir, Nalanda.
 5. The Circle Officer, Silao, District - Nalanda.

... .. Appellants

Versus

1. Ramnandan Singh son of Late Chandrabhan Singh resident of Village - Sheikhpul, P.O. Sithaula, P.S. - Rajgir, District - Nalanda.
2. Union of India through the Secretary, Ministry of Defence, New Delhi.

... .. Respondents

with
Letters Patent Appeal No. 1318 of 2015
In
Civil Writ Jurisdiction Case No.21585 of 2012

1. The State Of Bihar through the Commissioner Cum Secretary Department of Revenue and Land Reforms Government of Bihar, Patna.
2. The Collector, Nalanda at Biharsharif.
3. The District Land Acquisition Officer, Nalanda at Biharsharif.
4. The Sub-Divisional Officer, Rajgir, Nalanda.
5. The Circle Officer, Rajgir, District- Nalanda.

... .. Appellants

Versus

1. Hari Yadav son of Late Aitwari Yadav alias Aitwari Gope resident of village Visthapit Nagdih-2, P.O. Sithaura, P.S. Rajgir, District Nalanda.
2. Dwarika Yadav son of Late Aitwari Yadav @ Aitwari Gope resident of village Visthapit Nagdih-2 P.O. Sithaura, P.S. Rajgir, District Nalanda.
3. Jai Prakash Yadav son of Paryag Yadav resident f village Visthapit Nagdih-2 P.O. Sithaura, P.S. Rajgir, District Nalanda.

... .. Respondents

with
Letters Patent Appeal No. 1449 of 2014
In
Civil Writ Jurisdiction Case No.20554 of 2013

1. The State of Bihar through the Commissioner-cum-Secretary, Department of Revenue and Land Reforms, Government of Bihar
2. The Collector, Nalanda at Biharsharif
3. The District Land Acquisition Officer, Nalanda at Biharsharif
4. The Sub-Divisional Officer, Rajgir, Nalanda
5. The Circle Officer, Silao, District- Nalanda



... .. Appellants

Versus

Bhachan Singh son of Late Arjun Singh, Resident of Village- Sheikhpul, P.S.-
Rajgir, District- Nalanda

... .. Respondent

with

Letters Patent Appeal No. 1456 of 2014

In

Civil Writ Jurisdiction Case No.21129 of 2013

1. The State of Bihar through the Commissioner-cum-Secretary,
Department of Revenue and Land Reforms, Government of
Bihar, Patna.
2. The Collector Nalanda at Biharsharif.
3. The District Land Acquisition Officer, Nalanda at Biharsharif.
4. The Sub-Divisional Officer, Rajgir, Nalanda.
5. The Circle Officer, Silao, District - Nalanda.

... .. Appellants

Versus

Ramdas Singh son of Late Chandrabhan Singh resident of Village -
Sheikhpul, P.S. - Rajgir, District - Nalanda.

... .. Respondent

Appearance :

For the Appellants:

(In L.P.A. Nos. 1453 of 2014, 1456 of 2014 and 1449 of 2014)

:

Mr. Ranjan Kumar Singh, AC to PAAG-2

(In LPA No.1318 of 2014):

Mr. Ajay Kumar Sharma, AC to A.G.

For the UoI :

Mr. Sujit Kumar Sinha, C.G.C.

For the Pvt. Respondents :

Mr. Mrigank Mauli, Advocate

(in all appeals)

Mr. Jai Nandan Singh, Advocate

Mr. Prince Kumar Mishra, Advocate

Mr. Sanjay Kumar, Advocate

Mr. Sanket, Advocate

Mr. Kumar Ravish, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 23-02-2018

Heard counsel for the State, counsel for the private
respondents as well as for the Union of India.



All these appeals arise out of a common order dated 31.03.2014 passed by the learned single Judge who clubbed four writ applications together because the issue related to non-payment of compensation for acquisition of their land under emergency provisions for setting up of an Ordinance Factory at Rajgir in the district of Nalanda.

The learned single Judge took note of the fact that only on the basis of a suspected creation of *Jamabandi*, a 4(h) proceeding under Bihar Land Reforms Act, 1950, was initiated and that proceeding remained pending for more than 12 years without reaching any conclusion. The learned single Judge also took note of the fact that the report submitted in the 4(h) proceeding was in favour of the private respondents. Not only this the learned single Judge took note of the provisions of Section 4(h) and how and under what circumstances such power could be exercised keeping in mind a large number of decisions on such subject. This Court is tempted to quote the words used by the learned single Judge on this issue, which is reflected in paragraph 4 till paragraph 10, which reads as under :

“4. It is submitted that the whole proceedings are not only without jurisdiction but mala fide as well. With reference to section 4(h) of the Act, it is submitted that there are only three contingencies, under which section 4(h) of the Act could have been invoked. One where soon



after vesting it is found that any settlement had been made by the ex-land lord after first day of January, 1946, the genuineness of those settlements could be examined for the reason of avoidance of consequences of zamindari abolition. Second, where settlements were made to enhance the claim of compensation on zamindari abolition and third such settlements were made to cheat the Government. An enquiry could be initiated under section 4(h) of the Act and Jamabandi created could be cancelled. Section 4(h) of the Act permits no other contingencies.

5. As noted above, all the four cases arise out of the same proceedings and all the petitioners are relatives with exception as noted earlier. In the first case, a counter affidavit has been filed by the State, wherein it is stated that the lands were originally Gair mazarua malik lands and as such a doubt had now, after 50 years, arisen about settlements. I am afraid, that cannot be a ground because it is now well-settled by series of judgments of this Court that if it is Gair mazarua malik land, the Zamindar had full authority to make settlement thereof. There appears to be some misconception with the authorities that Gair mazarua malik land could not be settled. Apart from attempting to create a vague doubt, there is no substance in the counter affidavit.

6. It is equally well-settled by several decisions of this Court firstly that power under section 4(h) of the Act cannot be exercised in a casual manner. Secondly, if the State challenges the correctness of the settlements and the entries in relation thereto, onus is entirely upon the State to prove that they are wrong. The onus cannot be fastened on the person, who has been in possession and that too since long.

7. Then it is submitted that even the satisfaction of the Collector has to be based on some objective material and not on his subjective satisfaction. Then it is submitted



that if settlements had been validly made by ex-intermediary then the Collector had no jurisdiction to cancel the same except under the contingencies as mentioned in section 4(h) of the Act. Thus, the very initiation of these proceedings and on that ground to deny the right of the petitioners to receive compensation was mala fide and without jurisdiction. Reference was made to Division Bench judgment of this Court in the case of Chandreshwari Prasad Narain Deo and others vrs. State of Bihar and another, since reported in A.I.R. 1956 Patna 104; another Division Bench judgment in the case of Khiru Gope and others vrs. Land Reforms Deputy Collector, Jamui and others, since reported in A.I.R. 1983 Patna 121; in the case of Laxman Sahai and others vrs. State of Bihar and others, since reported in 1990 (1) B.L.J. 457 (in particular paragraph 14 thereof) and judgment of this Court in analogous cases being C.W.J.C. No. 19317 of 2010 (Suresh Singh Suchi vrs. the State of Bihar & Ors.), disposed of on 13.02.2014.

8. A reference to the aforesaid judgments would clearly show that the power of the Collector under section 4(h) of the Act is not an unbridled power. He cannot examine all or any settlement made by the ex-landlord. There are only three contingencies under which he can enquire into the validity of settlement as made thereunder. Then it has been held that if the State, for any reason, wants to challenge the authority or the title of any person based on such settlement then the only option left to the State is to approach the civil court for cancellation of the Jamabandi. In the present case, none of the situations stipulated above are at all even referred to as being applicable and yet without concluding the proceedings for cancellation of Jamabandi, petitioners have been deprived of compensation. As noticed above, the proceeding for cancellation of Jamabandi itself is without jurisdiction.



9. Thus, in my view, the very initiation of proceedings, which have now been pending for over 12 years and for which the report (Annexure 10) completely in favour of the petitioner is there, was itself without jurisdiction and was mala fide in law. It was only to deny just compensation to the petitioners. Not only that it was in effect an effort by the State to make unjust enrichment by taking and digesting the entire compensation, which was meant for persons like the petitioners.

10. Thus, in my view, there is no escape on the facts aforesaid to hold that the proceedings initiated for cancellation of Jamabandi being without jurisdiction cannot be sustained. Moreover, when the lands were acquired in the year 2000 undisputedly petitioners or their predecessors in interest were duly recorded raiyats which status is there till date, only they have been dispossessed without lawful compensation. Therefore, the petitioners are entitled to receive compensation in the matter there being no order otherwise disentitling the petitioners from receiving the compensation. State has already investigated the basis of claim as raised by the petitioners.”

Since the 4(h) proceeding has been quashed and rightly so by the learned single Judge, the claim of compensation of the private respondents which has been pocketed by the State authorities has to be made over to the private respondents since this is the direction of the learned single Judge as the award had already been prepared in favour of the private respondents, but the reason for non-payment was an illegal 4(h) proceeding initiated against them.



The submission on behalf of the State counsel that the *Jamabandi* itself was a suspect and some of the respondents failed to produce evidence of the ex-intermediary settling the land with the forefathers also does not seem to be correct because only one person failed to produce such an evidence whereas evidence with regard to such settlement was made over by some of the other private respondents. It is also taken note of that except for one private respondent, who happened to be the purchaser, the other private respondents are closely related and agnates.

Since suspicion and even ongoing enquiry under Section 4(h) did not result in any finding against the private respondents, which proceeding anyway has been held to be illegal, there is no occasion in this regard to interfere with the order of the learned single Judge.

The appeals lack merit, therefore, they stand dismissed.

The direction of the learned single Judge must be complied now within the time frame indicated by him.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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