

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.780 of 2015

Along with

Interlocutory Application No. 3263 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 8291 of 2013

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1. The Chief General Manager, East Zone N.T.P.C., Patna.
 2. The General Manager, N.T.P.C., Barh, Patna.

.... Appellant/s

Versus

1. Mahboob Azim. S/o Late Iftikhar Ahmad. Resident of Village - Sheikhpura, P.S.- Pandarak Barh, District - Patna.
2. Most. Nando Devi. W/o Late Baikunth Gope. Resident of Village - Sheikhpura, P.S.- Pandarak Barh, District - Patna.
3. The State of Bihar.
4. The Union of India through the Secretary, Energy, New Delhi.
5. The Secretary, Land and Revenue Department, Patna, Bihar.
6. The Collector, Patna District, Patna.
7. The District Land Acquisition Officer, Patna District, Patna.

.... Respondent/s

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Appearance :

For the Appellant : Mr. Anil Kumar Sinha with
Mr. Abhimanyu Deo and
Mr. Kumar Ravish, Advocates

For the Respondents No. 1 and 2 : Mr. Avinash Kumar with
Mr. Satish Kumar Verma, Advocates

For the State : Mr. Md. N. H. Khan, SC 1 with
Mr. Md. Irshad, AC to SC 1

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 17-08-2016

Re.: Interlocutory Application No. 3263 of 2015

The application is for condonation of delay of 78 days in
filing of the appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 78 days in filing of the appeal is condoned.

Interlocutory Application stands disposed off.

Re.: Letters Patent Appeal No. 780 of 2015

The order dated 21st October, 2014 passed by the learned Single Bench is the subject matter of challenge in the present Letters Patent Appeal whereby the benefit of Bihar Land Acquisition, Re-establishment and Rehabilitation Scheme, 2007 (hereinafter referred to as '2007 Scheme') published on 19th February, 2007 was extended to the respondents (hereinafter referred to as the 'applicants').

A large chunk of land was acquired on different dates for National Thermal Power Corporation for the establishment of Power Generating Unit. The land of the applicants became subject matter of a Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the 'Act') dated 3rd April, 2006 and the declaration under Section 6 of the Act was published on 3rd June, 2006. As per the applicants, the award was announced on 20th February, 2009. Therefore, such award being after the publication of the 2007 Scheme, the applicants claim benefit of additional solatium of 60% for the reason that the land owner has voluntarily surrendered the possession of the land. Such claim was accepted by the learned

Single Bench.

The 2007 Scheme as published on 19th February, 2007 was modified on 23rd May, 2007. The relevant extract from the Bihar Land Acquisition, Re-establishment and Rehabilitation Scheme, 2007 dated 19th February, 2007, when translated into English reads as under:-

“5. The policy would be applicable to all those cases, in which an Award under Section 11 has not been issued. The State Government will review the working of scheme and issue clarifications from time to time”.

Subsequently, the State Government issued clarification on 23rd May, 2007 to the following effect:-

“3. If before issuance of Bihar Land Acquisition, Re-establishment and Rehabilitation Scheme, 2007 dated 19th February, 2007, 80 per cent of the amount of compensation has been paid after preparation of the award, and the acquiring department has been handed over the possession, then the revised policy would not be applicable.”

The stand of the applicants in the writ application itself is that they have received 80% of the compensation but the date on which they have received is not given. In the counter affidavit filed on behalf of the appellants, it is stated that 80% payment was made on 15th January, 2007 and the possession was handed over to the appellants that is before the policy was announced on 17.02.2007. Such assertion on behalf of the appellants has not been controverted.



The award under Section 11 of the Act was announced on 20th February, 2009, but the benefit of 2007 Scheme will not be available to the applicants as possession was taken over by the NTPC before the publication of the 2007 Scheme on 19th February, 2007 and on payment of 80% of the compensation. Such as the ratio laid down by this Court in L.P.A. No. 715 of 2015 Smt. Dharamsheela Devi & Ors. Vs. The State of Bihar & Ors. decided on 20th July, 2016.

The relevant extract from the said order reads as under:

“ 14. Learned counsel for the appellants has referred to a Single Bench order passed in CWJC No.12595 of 2011 (Mahboob Azim & Anr. Versus The State of Bihar & Ors.) dated 21st of November, 2011 wherein, a direction was issued to consider the claim of the petitioners therein for payment of compensation in terms of the Rehabilitation Policy of 2007. It is thereafter the Collector passed an order declaring the claim of the land owners which order became subject matter of challenge in CWJC No.8291 of 2013 (Mahboob Azim & Anr. Versus The State of Bihar & Ors.). In the aforesaid case, an award was announced on 20th February, 2009. Therefore, it was prepared under the new Scheme and thus, the land owners have been rightly found entitled to benefit of enhanced compensation. But in the present case, 80% of the compensation amount was paid and the possession delivered before the commencement of the Scheme and therefore, the new Scheme, as explained by the State Government, will not be applicable in respect of the lands of the appellants.”

It may be stated that the order passed by the learned

Single Bench was considered in the aforesaid appeal. It was not pointed out that the Letters Patent Appeal against the order passed by the learned Single Bench is pending before this Court. The judgment of the learned Single Bench was distinguished for the reason that the award was announced on 20th February, 2009 i.e., after the publication of the Scheme on 17th February, 2007 but the facts on record shows that in fact 80% of compensation was paid on 15th January, 2007 i.e., before the publication of the Scheme and thus in terms of the modification in the scheme, the applicants are not entitled to benefit of such scheme.

Therefore, in view of the judgment in Smt. Dharamsheela Devi's (Supra), we find that the order of the learned Single Bench cannot be sustained and, thus, the same is set aside. The present appeal is allowed in the same terms as L.P.A. No. 715 of 2015.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/P. Kumar

AFR/NAFR	NAFR
CAV DATE	N/A
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