

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10763 of 2014

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1. Sanjay Kumar Son of Late Bisheshwar Mahto Resident of Village-
Dashrathpur (Side by Pawapuri Digambar Jain Mandir), P.O- Pawapuri,
P.S- Giriyak, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Revenue and Land Reforms Department, Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Old Secretariat, Patna.
3. The Principal Secretary, Health, Medical Education and Family Welfare Department, New Secretariat, Patna.
4. The Director- in- Chief, Health, Medical Education and Family Welfare Department, New Secretariat, Patna.
5. The Principal, Vardhman Mahabir Medical College and Hospital, Pawapuri, District- Nalanda.
6. The Superintendent, Vardhman Mahabir Medical College and Hospital, Pawapuri, District- Nalanda.
7. The District Magistrate and Collector, Nalanda at Bihar Sharif.
8. The District Land Acquisition Officer, Nalanda at Bihar Sharif.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rabi Bhushan Prasad No. 1

For the Respondent/s : Mr. SC30- Avinash Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 24-09-2018 Heard both sides.

The petitioner has filed this writ petition challenging the legality, validity and propriety of the action of the respondents whereby the award of compensation in Award No.91(k) and 110(k) in L.A. Case No.3 of 2007-08 was granted recording the nature of land of the petitioner as agriculture-cum-residential instead of commercial. The petitioner further seeks relief for a



direction to the respondents to pay compensation of the land acquired at the rate of commercial and also provide employment in Vardhman Mahavir Medical College and Hospital, Pawapuri, Nalanda as per rehabilitation scheme of the Government.

The factual matrix of the case is that the Govt. of Bihar for the purpose of construction of building for Vardhman Mahavir Medical College and Hospital, Pawapuri, Nalanda published notification under the provision of Section 4 of the Land Acquisition Act, 1894(hereinafter referred to as “the Act”) read with Section 17 of the Act in Hindi newspaper “Hindustan” on 02.02.2008 in financial year 2007-08 with regard to 32.39 acres of land including the land of the petitioner bearing Khata No.113, Survey Plot No.105 measuring an area 0.0575 decimals situated in village Dashrathpur on which the residential house as well as business premises of the petitioner were standing. The petitioner was running different shops and carry on business of dairy and kutti. The Land Acquisition Officer paid Rs.6,11,572/- through account payee cheque dated 17.12.2011. The Land Acquisition Officer has shown the nature of land of the petitioner as agricultural land dhanhar whereas the land of the petitioner was residential and commercial situated by the side of Pawapuri Digambar Jain Mandir, internationally known temple. The rate of



compensation of the commercial land as Rs.725 per sq. ft. but the respondents have resorted illegal method of calculating the rate of compensation showing the land as agricultural land dhanhar. The petitioner is entitled to get compensation of Rs.19,57,500/- at the rate of Rs.725 per sq. ft. but the petitioner was paid Rs.6,11,572/- as compensation. The petitioner also raised objection but the authority did not consider his case. It is submitted that the petitioner has got constitutional right under Article 300A of the Constitution of India and the respondents are not legally entitled to acquire the lands of the petitioner without paying proper compensation.

The respondent Nos.7 and 8, District Magistrate and the Land Acquisition Officer, Nalanda filed counter-affidavit and stated that total land 32.39 acres situated in village Dashrathpur was acquired in the year 2007-08 for construction of Vardhman Mahavir Medical College and Hospital, Pawapuri, Nalanda. Entire compensation amount was paid to the petitioner on 17.12.2011 and the land acquisition process has become final and closed. The petitioner did not file any objection either with regard to the nature of land or with regard to the rate of compensation during the pendency of the land acquisition. It is submitted that Plot No.105 of Khata No.113 measuring area 0.0575 decimals was recorded as



dhanhar land and at the time of preparation of panji, there was palm tree and kutcha fush house which was used for tying the cattles. Award was prepared bearing Award No.91(k) for house and tree and Award No.110(k) was prepared for land and the entire amount of compensation was paid to the petitioner. The petitioner is not entitled to get compensation of his land at the rate of commercial.

On consideration of submission of both sides, the question arises for consideration “whether the authority has committed any illegality in awarding compensation to the petitioner and the petitioner without raising any issue or objection during the course of acquisition of the land is legally entitled to get compensation of the land treating the land to be commercial?”

From the facts of the case, it appears that Land Acquisition Officer issued the preliminary notification. The petitioner has got right to file objection and to be heard under Section 5A(1) of the Act after issuance of notification under Section 4 of the Act with regard to all sorts of objection including the nature of land but the petitioner did not file any objection. Notice was also issued under Section 9 of the Act but the petitioner did not raise any objection with regard to the rate of compensation and the nature of the land, accordingly, the award



was prepared. Even after preparation of award, the notice was given to the petitioner under Section 12(2) of the Act. The petitioner even did not file any written application to the Collector intimating the Collector that he was not willing to accept the award so that the Collector shall refer the matter to Referral Judge for determination with regard to measurement of land, amount of compensation or apportionment of compensation. The petitioner received the entire amount of compensation on 17.12.2011 and filed this writ petition only in the year 2014. Therefore, I find that the petitioner after receiving 100% compensation amount is not entitled to raise objection that too in the writ petition about the nature of land and amount of compensation. Accordingly, I do not find any merit in this writ petition and the same is dismissed.

(Prabhat Kumar Jha, J)

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