

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2192 of 2016

In

Civil Writ Jurisdiction Case No.3615 of 2011

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Md. Jeebrail Son of late Jirail Shekh @ Md. Ijrail Resident of Naya chouk,
(Beside Bhagat Singh Park), Near Head Post office Buxar, P.S. (Town),
District Buxar.

... .. Appellant

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Main Secretariat, Patna
3. The Land Reforms Commissioner, Government of Bihar, Main Secretariat, Patna.
4. The Principal Secretary, Revenue Department, Government of Bihar, Main Secretariat, Patna
5. The District Magistrate-cum-Collector, Buxar, District Buxar.
6. The District Land Acquisition Officer, Buxar, Collectorat Buxar, District-Buxar.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Shashi Shekhar Dvivedi, Senior Advocate Mr. Manendra Kumar Sinha, Advocate Mr. Parth Gaurav, Advocate
For the Respondents	:	Mrs. Nutan Sahay, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 09-01-2018

Heard learned counsel for the parties.

The whole essence of the litigation has been discussed in paragraph 3 and 4 of the impugned order dated 10.08.2016, which is reproduced hereinbelow:

“3. The learned counsel appearing on behalf of the petitioner submits that the lands in question was never acquired by the respondent authorities on permanent basis and, therefore, until and unless a proper proceeding is initiated for acquisition of the lands in question, they may be directed



not to take possession over the same. According to him, a proceeding under Section 35(1) of The Land Acquisition Act, 1894 (in short Act, 1894) was started earlier giving rise to Case No. 176T of 1971-72 for acquisition of new plot no. 38 (old plot no. 45) situate at mauza Sohnipatti against the father and uncle of the petitioner, but on the basis of aforesaid proceeding, which was for a limited period, the respondent authorities cannot be permitted to take possession on permanent basis over the land in question claimed by the petitioner.

4. In compliance of the order dated 25.02.2011 passed by a Bench of this Court, a detailed counter-affidavit on behalf of the respondent nos. 5 and 6 was filed on 19th December, 2011 after service of its copy upon the learned counsel appearing on behalf of the petitioner. The learned AC to AG appearing on behalf of the respondents, by referring to the averments made in the aforesaid counter-affidavit, submits that, in fact, for acquisition of certain parcels of lands bearing khata no. 95, CS Plot No. 45, area 1.94 acres and plot no. 23 area 16 decimals, a Land Acquisition Case No. 26 of 1969-70 was initiated under the provisions of the Act, 1894 for the purposes of construction of Ganga Bridge, Buxar at village Sohanipatti, which is now a part of National Highway No. 84. It is further submitted that in the aforesaid land acquisition case notice was properly served upon the father of the petitioner namely Md. Israil Mian and the amount of award prepared in the aforesaid land acquisition case was accepted by him on 16.07.1970. It is next contended that plea taken by the petitioner in the present proceeding that no land acquisition proceeding was started after issuance of notification under Section 4(1) read with Section 6 of the Act, 1894 for acquisition of the land in question is completely wrong and false. By referring to paragraph 7 of the aforesaid counter-affidavit, he further submitted that a separate land acquisition proceeding Case No. 176/71-72 was started against Md. Israfi and Md. Ijrail for temporary acquisition of 0.05 acre only of R.S. Plot No. 45 corresponding to C.S. Plot No. 29 and not from



C.S. Plot no. 45, which is claimed by the petitioner in the present proceeding. It is also contended that for acquisition of 0.05 acre of land of R.S. Plot No. 45 on temporary basis, a compensation amount was determined, but that was not accepted by the interested persons. Hence, aforesaid compensation amount was deposited in the office of Account General, Ranchi on 16.03.1973. In paragraph 12 of the aforesaid counter-affidavit, it has been asserted by the aforesaid respondents that the lands in question is not in the possession of the petitioner and the plantation over the lands in question was done by the Forest Department of the Government, which is evident from the report dated 16.4.2011, brought on record as Annexure-D to the aforesaid counter-affidavit. In paragraph-14 of the aforesaid counter-affidavit it has further been asserted that delivery of possession over the land in question for construction of Ganga Bridge Project, Buxar was given way back on 21.08.1978, and thereafter construction of Ganga Bridge over the land in question, besides other plot of lands, was completed.”

If this is so then the present writ application is nothing but an effort to take advantage of long passage of time of an old acquisition matter, where compensation etc. were already granted and received by the father of the present petitioner, to make a few bucks more.

The Court cannot be unmindful of the fact that the land in question was acquired but since the land was not fully utilized for the purpose for the said acquisition and now the authorities after having decided to expand NH 84 into a four lane and since the petitioner could have been in occupation of the land but not in



possession after the acquisition, he is trying to make out a case as if no acquisition was made at all. The details and the evidence of the acquisition and compensation were brought on record in the counter affidavit and, therefore, the learned single Judge rightly refused to bite the bait and dismissed the writ application being nothing but an effort to fish in the present amended Land Acquisition Act to make a kill.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	10.01.2018
Transmission Date	N/A

