

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7596 of 2017

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Sanjeet Kumar @ Sanjeet Kumar Rai Son of late Rameshwar Rai Resident of
Village- Dudahi, P.S.- Babubarhi, District- Madhubani.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Commissioner Darbhanga Division, Darbhanga.
3. The Collector Cum District Land Acquisition Officer, Madhubani.
4. The Additional District Magistrate, Madhubani.
5. The Circle Officer of Babubarhi Anchal of Madhubani District.
6. The Revenue Clerk of Dudahi Mouja of Babubarhi Anchal Madhubani,.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Sanjeev Kumar Jha, Advocate
For the Respondents : Mr. Rakesh Kumar Shrivastava, AC to GP-15

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 17-06-2019

The petitioner is seeking a direction to the respondents to pay compensation with interest in accordance with the statutory provisions, against acquisition of his land for the public purpose of excavation of minor canal. The land is said to have been acquired for the said purpose in the year 2008. The description of the land has been given as old Khata No. 103, Plots No. 842 and 843, new



Khata No. 470, Plots No. 1806 and 1807, situate at *mauza Dudahi, Thana No. 174, Anchal Babubarhi* in the district of Madhubani. It is the petitioner's case that the land, appertaining to Plot No. 843 of Khata No. 103, was acquired by one Mahavir Rai from the then Jamindar Suryakala Ojhain as mode of settlement in *Fasli* year 1351 and land of Plot No. 842 of same khata was acquired by him in the year 1940, whereafter the said Mahavir Rai had come in possession over the land. In course of regional survey, however, the aforesaid lands were entered as '*Anabad Bihar Sarkar*', without giving any notice to the land owner Mahavir Rai. Son of Mahavir Rai had to, thereafter, file a case under Section 106 of the Bihar Tenancy Act, 1885 (hereinafter referred to as 'the B.T. Act'), giving rise to T.S. Case No. 1076 of 1989, before the Settlement Officer. Though the concerned Circle Officer was issued notice in the said proceeding under Section 106 of the B.T. Act, no one turned up before him and, therefore, upon perusal of the relevant documents available on record, the Settlement Officer passed final order in favour of Mahavir Rai on 22.01.1993 with a direction to enter the name of the petitioners in C.S. Khatiyon with regard to the lands in question in new Khata No. 470 and Plots No. 1806 and 1807 in place of '*Anabad Bihar Sarkar*'. In the light of the said decision of the Settlement Officer, name of son of Mahavir



Rai was entered in continuous Khatiyani and the entry '*Anabad Bihar Sarkar*' was expunged. It is the further case of the petitioner that after name of Mahavir Rai was duly entered in C.S. Khatiyani, the petitioner and his brother Ranjeet Kumar acquired the land through registered sale deeds from the son of late Mahavir Rai and Gangiya Devi, wife of Nandeshwar Rai, executed on 17.08.2001. It is, thus, the petitioner's case that after purchase of the lands in question, the petitioner came in peaceful possession over the land.

It is further asserted that in the year 2008, the lands in question were acquired under the scheme of excavation of minor canal, but no amount of compensation was paid to the petitioner. It has further been asserted that since the land was acquired in 2008, without giving any compensation to the petitioner, he had made several applications to the concerned respondents. Enquiry was thereafter done in 2010 by the Circle Officer. The report submitted by the Circle Inspector before the Circle Officer, dated 17.03.2010, has been brought on record by way of Annexure-5 to the writ application. On perusal of Annexure-5, it is apparent that the Circle officer has referred to a photocopy of an order passed under Section 106 of the B.T. Act, whereby Nanda Rai and Chulhai Rai, son of Mahavir Rai have been held to be entitled to share and that



there was *jamabandi* running in the name of Mahavir Rai in respect of which rent receipt had been issued on 24.03.1963.

A counter affidavit has been filed on behalf of the respondent State of Bihar. It has been stated in the counter affidavit that certain lands were acquired by the Special Land Acquisition Officer, Kosi Project, Darbhanga, after receiving proposal from the Executive Engineer, Kosi Canal, Sub Division West, Andhratharhi, and since the land, which is subject matter of present dispute, had been recorded as '*Anabad Bihar Sarkar*', the same was kept free from the process of acquisition. The averments made in paragraph 4 and 5 of the writ application on the question of title of Mahavir Rai, the ancestor of the petitioner's vendor, has been specifically disputed in the counter affidavit and it has been asserted that since the land situate at *Mauza Dudahi*, Thana No. 174, appertaining to Khata No. 103, Khesra No. 842 admeasuring two *bigha* five *katha* and seven *dhur* and Khesra No. 843, admeasuring three *bigha* five *dhur*, were *Gairmajarua Khas* land under occupation for public utility and uses, settlement in favour of Mahavir Rai and subsequent sale deeds in favour of Mahavir Rai are forged, fabricated and were never effected. It has also been stated that no rent was ever fixed by the ex-landlord or by the State of Bihar in favour of Mahavir Rai in respect of land in question



and hence, the alleged rent receipts, said to have been issued by the State of Bihar, is disputed as incorrect. In respect of the proceeding under Section 106 of the B.T. Act, it has been asserted that the State of Bihar was never noticed nor any reasonable opportunity was ever given.

It has been asserted that name of the Government of Bihar was illegally expunged from the revisional survey khatiyan and the name of Mahavir Rai wrongly entered in respect of Khata No. 470 appertaining to Khesra No. 1806 and 1807. The capacity of the heirs of Mahavir Rai to execute sale deed in the absence of any title in favour of Mahavir Rai has been questioned and it has been reasserted that the alleged sale deeds said to have been executed by descendants of Mahavir Rai are forged and fabricated.

Mr. Sanjeev Kumar Jha, learned counsel appearing on behalf of the petitioner has submitted that the State respondents are bound by the decision of the Settlement Officer in the proceeding under Section 106 of the B.T. Act and, therefore, they cannot raise any dispute.

Learned Assistant Counsel to G.P.-15 has, on the other hand, argued that this Court, exercising jurisdiction of judicial review under Article 226 of the Constitution of India, may not go into the disputed questions of facts touching title over the land in



question of the petitioner. He has also argued that claim of the petitioner is belated and for the said reason, it is not maintainable.

If the pleadings on record are to be accepted, the land was acquired in 2010 itself. There is nothing on record to demonstrate that at the time of the acquisition proceeding, the petitioner ever raised any grievance against any authority raising any kind of claim, either opposing acquisition of land or claiming any amount of compensation. The first representation, which the petitioner is said to have made before the District Magistrate, is dated 10.04.2017. There is no explanation in the pleadings to offer for the delay of nearly seven years in approaching this Court. It has been repeatedly held that delay and laches on the part of a litigant is an important factor, which would require consideration in a proceeding under Article 226 of the Constitution of India. I am of the opinion that stale or dead claims cannot be permitted to be raised in a proceeding under Article 226 of the Constitution of India.

Secondly, learned counsel appearing on behalf of the State respondents appears to be correct in his submission that the writ Court in a proceeding under Article 226 of the Constitution of India should not entertain disputes involving questions of facts.



In a case where a litigant wishes to press his/her claim before High Court under Article 226 of the Constitution of India, the claim raised by such litigant must be determined on the basis of factual position acknowledged by the contesting respondents. A High Court in exercise of jurisdiction under Article 226 of the Constitution of India should normally not adjudicate into the matter, where the foundational facts are disputed.

This has been the consistent approach of the Supreme Court and the High Court. Reference may be made to the decisions in case of *Subhashree Das Alias Milli vs. State of Orissa and Others*, reported in (2012) 9 SCC 729, *Hindustan Coca-Cola Beverage Private Limited Vs. Sangli Miraj and Kupwad Municipal Corporation and Others*, reported in (2011) 7 SCC 605.

I must record, at this stage, that there is no reply filed on behalf of the petitioner to the counter affidavit filed on behalf of the State of Bihar. In such view of the matter, I am not inclined to entertain this writ application, which is accordingly dismissed. The dismissal of the writ application will, however, not come in the way of the petitioner approaching Civil Court of competent jurisdiction for adjudication of the question of his title, if the same is not otherwise barred by law.



There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-c

AFR/NAFR	N.A.F.R.
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