

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1685 of 2018
In
CIVIL REVIEW No.42 of 2018

1. The Chairman-cum-Managing Director, The Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna
2. The Managing Director, Bihar State Power Transmission Company Ltd. 4th Floor, Vidyut Bhawan, Bailey Road, Patna.
3. The General manager-cum-Chief Engineer, Transmission Zone-II, Bihar State Power Transmission Company Ltd., Bhikhanpura, Muzaffarpur
4. The Electrical Superintending Engineer, Transmission Zone-II, Transmission Circle, Bihar State Power Transmission Company Ltd. Muzaffarpur
5. The Electrical Executive Engineer, Transmission Zone-II, Transmission Circle, Bihar State Power Transmission Company Ltd. Muzaffarpur
6. The Electrical Assistant Engineer, Transmission Zone-II, Transmission Circle, Bihar State Power Transmission Company Ltd., Muzaffarpur

... .. Appellant/s

Versus

1. Ashok Kumar Singh Son of Late Phuldeo Singh Resident of Village-Rantomha, P.S.- Minapur, District-Muzaffarpur.
2. The State of Bihar through the Principal Secretary, Department of Energy, Govt. of Bihar, Patna

... .. Respondent/s

with
Letters Patent Appeal No. 583 of 2019
In
Civil Writ Jurisdiction Case No.14186 of 2015

1. The Chairman-cum-Managing Director, The Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna
2. The Managing Director Bihar State Power Transmission Company Ltd. 4th Floor, Vidyut Bhawan, Bailey Road, Patna
3. The General Manager-cum-Chief Engineer, Transmission Zone-II, Bihar State Power Transmission Company Ltd., Bhikhanpura, Muzaffarpur
4. The Electrical Superintending Engineer Transmission Zone-II, Transmission Circle, Bihar State Power Transmission Company Ltd., Muzaffarpur
5. The Electrical Executive Engineer Transmission Zone-II, Transmission Circle, Bihar State Power Transmission Company Ltd., Muzaffarpur
6. The Electrical Assistant Engineer, Transmission Zone-II, Transmission



Circle, Bihar State Power Transmission Company Ltd., Muzaffarpur

... .. Appellant/s

Versus

1. Ashok Kumar Singh S/o Late Phuldeo Singh R/o Village-Rantomha, P.S.-
Minapur, District-Muzaffarpur
2. The State of Bihar through the Principal Secretary, Department of Energy,
Govt. of Bihar, Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Lalit Kishore, Sr. General Mr. Ritesh, Advocate
For the State	:	Mr. Rakesh Ambastha, Advocate
For Respondent No. 1	:	Mr. Pradeep Kumar Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-07-2019

I.A. No. 9012 of 2018 in L.P.A. No. 1685 of 2018
I.A. No. 1 of 2019 in L.P.A. No. 583 of 2019

Having heard learned Counsel for the parties, we are satisfied that the delay has been sufficiently explained. The delay condonation applications are allowed. These appeals shall be treated to be within time.

L.P.A. No. 1685 of 2018
L.P.A. No. 583 of 2019

These two appeals have been preferred by the Bihar State Power Holding Company taking exception to the judgement dated 11th July, 2017 of the learned Single Judge



and to the order dated 10.10.2018 whereby the review application filed by the appellant was rejected by the same learned Single Judge.

The Power Holding Company has occupied certain land which the respondent-petitioner claims to be situate partly over his share of land of Plot Nos.1614 and 1617 of village Ramtomha of district- Muzaffarpur. It is undisputed that a four legged tower has been constructed by the Power Holding Company over the land which, according to the parties, originally belonged to Pradeep Singh and devolved on his four sons, namely, Chandrika Singh, Fuldeo Singh, Ram Chandra Singh and Binod Singh. On 17th of December, 2013, Binod Singh sold his share which was to the extent of $7\frac{3}{4}$ decimals ($\frac{1}{4}$ th of the total area of 39 decimals) comprising of both the plots in favour of respondent No.1 Ashok Kumar Singh. It is contended by the said respondent that by virtue of the sale-deed, the name of the respondent was mutated and, accordingly, for fiscal and revenue purposes Jamabandi was also registered being Jamabandi No.784.

Chandrika Singh, the other co-tenure holder, whose name is reflected in Jamabandi No.931, has received the compensation in respect of the installation of the pillars



erected by the appellant. The respondent No.1 contends that the payment ought to have been made to him keeping in view the extent of the land belonging to the said respondent which has been occupied by the appellant and, therefore, he came up before this Court by filing C.W.J.C. No.14186 of 2015.

A learned Single Judge has allowed the writ petition and directed the General Manager of the Power Holding Company to adjudicate the same and make payment of compensation to the respondent No.1 while recording a finding that there is no doubt that the land of respondent-petitioner has been occupied.

A review petition was filed by the Power Holding Company which was dismissed on 10.10.2018 being Civil Review No. 42 of 2018. Prior to this, the Power Holding Company had filed L.P.A. No.1242 of 2017 that was withdrawn with liberty to file the review application. The review application, as stated above, was rejected on 10.10.2018 vide following order:

“Heard learned counsel for the parties.

2. It is very unfortunate that the Bihar State Power Holding Company Limited instead of complying the order of this Court has filed this review petition giving a reason that they are only required to pay the crop compensation not the compensation of the land. Second



point has been raised by the Bihar State Power Holding Company Limited that the original petitioner should approach the Collector not the management.

3. It is an admitted fact that the petitioner-company has utilized the land of Khata No.27, Plot No.1614, area 3¼ decimal as well as Khata No.27, Plot No.1627, area 4½ decimal for the purposes of establishing the electric pole of 220 K.V. transmission line and the petitioner has challenged the utilization of the land, which was not accepted by this Court but directed to pay compensation of land in view of the judgment rendered in the case of The Power Grid Corporation of India Limited vs. Century Textiles & Industries Limited and Ors. reported in 2017(2) PLJR (S.C.) 152.

4. Learned counsel for the petitioner-company has tried to show that the judgment does not stipulates for payment of compensation of the land, only it says about the compensation of the crop. It is completely a misplaced and misguided submission in view of paragraph nos. 25 and 26 of the aforesaid judgment, which are as follows:-

“25. At this stage, we deal with the direction of the Division Bench regarding compensation payable to the writ petitioner, or for that matter to the State Government. In the first instance, no such claim was laid by the writ petitioner in the writ petition or by the State Government before the High Court. Furthermore, the High Court could not have given this task to the District Collector, which is contrary to the provisions of Section 16(c) of the Indian Telegraph Act, 1885 which are extended to laying down of electricity lines.



As per this provision, such an authority vests with the District Judge.

26. These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the concerned District Judge for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated October 15, 2015 in this behalf which inter alia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per the said guidelines.”

5. These paragraphs does not preclude the person to get compensation for the utilization of the land. If the lands of the citizen has been utilized for the public purpose, the citizen cannot be deprived of the compensation. If such a plea is accepted then all lands acquired by different Governments for different projects such as for construction of National Highway or State Highway or for any other projects and if the citizen is said, not entitled to compensation, then it will an absurd submission. Further, in the L.P.A. Court the petitioner-company have stated that some subsequent events have taken place and on that ground they have withdrawn the L.P.A. with a liberty to file review petition, but in fact none.

6. Learned counsel for the petitioner-company has submitted that the payment of compensation of crops



has been made to the original petitioner, which has affirmatively been denied by learned counsel for the original petitioner. When there is direction for compensation of the land, then the petitioner-company was obliged to make payment of compensation of the land as per the market rate which is very well known to every one, running its agency for doing commercial work or none commercial work. If they do not know the rate of land they must take proper instruction and assistance from the respective Collectariat, they would be provided the details of rate of the area of the land, but instead of following this procedure, they have adopted a delay tactic, which is not acceptable to this Court.

7. Second point that has been taken that the petitioner should approach the Collector, but in paragraph no.25 of the judgment rendered in the case of Century Textiles & Industries Limited (supra) the Hon'ble Supreme Court has held that the Collector does not have jurisdiction to look into the matter of granting compensation. If the compensation is in lower side, then only the District Judge of the area concerned has jurisdiction. In the present case, no compensation of the land has been paid to the petitioner.

8. In such view of the matter, this Court does not find any error in the order apparent on the face or record. Accordingly, this review petition is dismissed."

The learned Single Judge, while rejecting the review application, also held that the Collector of the District does not have any jurisdiction to look into the matter of granting compensation, inasmuch as the dispute relating to the



quantum of compensation has to be referred to the District Judge who has the authority to adjudicate upon the same.

Shri Lalit Kishore, learned senior counsel for the appellant in both the appeals, has contended that the learned Single Judge could not have issued a mandamus to the Power Holding Company in respect of a dispute relating to the title and possession of a holding which can only be adjudicated by the appropriate forum. The payment of compensation has been made to Chandrika Singh on the basis of a revenue enquiry that was conducted and is on record. He submits that the Rajaswa Karmchari, the Anchal Adhikari (Circle Officer) as well as the Collector have all indicated in their reports that upon enquiry from the local people, it was found that the tower had been erected on the share of the land of Chandrika Singh and, therefore, the payment of compensation was made to him. All these reports are on record and we have perused them.

The common factor in all the three reports is the same, namely, an enquiry from the local people. The report nowhere indicates the participation of the respondent No.1 while the enquiry was being conducted. For reasons best known to the revenue authorities, it is not understood that



when the matter had to be gone into for the purpose of identifying the status of the land that was occupied by the appellant Company, then it was incumbent upon the respondent authorities to have made the enquiries from all the tenants of the holding and not from the local people, inasmuch as it is the *inter se* claim of the co-tenure holders themselves which had to be enquired into and reported to the Power Holding Company for payment of compensation. It was, therefore, a dispute between one of the co-tenants with the other claiming his share of compensation which was wrongly paid to another. This dispute, therefore, did not involve local people and the report from the Rajaswa Karmchari has been repeated by the Anchal Adhikari as well as by the District Magistrate without there being any participation of the respondent No.1.

The learned Single Judge has observed that in a matter of compensation payable by the Power Holding Company, the Collector has no role to play, but, at the same time, we are of the opinion that in a matter relating to a dispute arising out of the possession of land governed by Revenue Laws, it is the Collector who is empowered being In-charge of maintenance of revenue records of the District



who can carry out and conduct an enquiry in relation to the extent of possession and share of land as is being claimed in the present case. Thus, the Collector would not be exercising any authority with regard to payment of compensation rather he would be exercising an authority with regard to the extent of the claim of the respondent No.1 in respect of plot Nos.1614 and 1617 and further as to whether the tower is situate over the share of the land of the respondent No.1 or not. The Power Holding Company has, therefore, to extend the benefit of compensation after any such report is tendered by the Collector which in the instant case, as observed above, has been tendered without the participation of the respondent No.1.

The learned Single Judge has straightaway issued a direction to the Power Holding Company to adjudicate the matter. In our opinion, this should have been preceded by a fresh revenue enquiry with the participation of the respondent No.1 and considering his claim as well as other co-tenure holders.

We, therefore, dispose off these two appeals by modifying the impugned judgement dated 11th July, 2017 as well as the order passed on the review application dated



10.10.2018 with a direction to the Collector, Muzaffarpur to himself get an enquiry conducted after a spot inspection in the presence of respondent No.1 and the other co-tenure holders of Plot No. 1614 and 1617 after going through the records keeping in view the status of possession as claimed by the respondent no.1 and then to submit his report before the appellant Company.

This exercise shall be undertaken within six weeks from today. With the submission of the report before the Power Holding Company, the Chairman -cum- Managing Director shall, accordingly, then proceed to pass an appropriate order in the terms as directed by the learned Single Judge. It goes without saying that the enquiry shall be conducted with the participation of Mr. Chandrika Singh and other co-tenure holders as well.

The appeals are disposed off with the said directions.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

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