

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15730 of 2019

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Ram Pravesh Pandey Son of Ram Awatar Pandey Resident of Village-
Gangauli, P.S.- Simri, Distt- Buxar.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna, Bihar.
3. The Principal Secretary, Land and Revenue Department, Government of Bihar, Old Secretariat, Patna, Bihar.
4. The Collector, Buxar.
5. The Sub-Division Officer, Buxar, Collectorate, Buxar.
6. The Competent Authority cum District Land Acquisition Officer, Buxar.
7. The Circle Officer, Simri, Buxar.
8. The Project Director, National Highway Authority Pariyojna Office Unit, NH-84, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Radha Mohan Pandey, Advocate
For the Respondent State:		Mr. Raj Kishore Roy, G.P.-18
For the Respondent NHAI :		Mr. Anshay Bahadur Mathur, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 28-08-2019

An order, dated 10.06.2019, passed by the Competent Authority-cum-District Land Acquisition Officer, Buxar, issued vide Memo. No. 175, is under challenge in the present writ application, whereby the petitioner's claim for grant of compensation against acquisition of land for widening of N.H.-84 has been rejected.

2. It appears from the impugned order that the District Land Acquisition Officer, Buxar, has treated the land in question to



be a Government land and has refused to accept the petitioner's plea that the same was *raiya* land.

3. Description of the land has been given in paragraph 1 of the writ application itself, which appertains to Khata No. 899, R.S. Plot No. 4694, situate at Mauza Dhakaich in the district of Buxar.

4. I must, at the outset, mention that the writ application does not disclose as to when was the petitioner's land acquired and when was the process of acquisition of land initiated.

5. A counter affidavit has been filed on behalf of the District Land Acquisition Officer, Buxar, from which it transpires that for acquisition of the concerned land, notification under Section 3A of the National Highways Act, 1956 (hereinafter referred to as 'the N.H. Act'), was published on 04.11.2009 and declaration of acquisition of the land under Section 3D of the N.H. Act was made on 13.05.2010. The land in question was treated as Government land. It is the specific case of the State of Bihar in the counter affidavit that no objection was ever raised by the petitioner as contemplated under Section 3C of the N.H. Act at any point of time. It has also been averred that in course of plot to plot survey conducted by the *Amin* in the year 2011, the plot in question was



entered as '*Anabad Bihar Sarkar*'. These facts are not at all in dispute.

6. It is evident, thus, that though the land was acquired in 2010 itself, the petitioner, for the first time, raised his claim by making application before the District Land Acquisition Officer, Buxar, in 2019, basing it on an order passed by the Deputy Director, Consolidation, Bhojpur, in Case No.2 of 2018, whereby the Deputy Director, Consolidation, is said to have declared petitioner's *raiya*ti right over the land in question. The said order, dated 02.11.2018, passed by the Deputy Director, Consolidation, in Case No. 2 of 2018, has been brought on record by way of Annexure-10 to the writ application. It is evident that the order was passed on an application filed before the Deputy Director, Consolidation, under Section 33A of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Consolidation Act'). It is clearly evincible, thus, that whereas the Deputy Collector Land Reforms has refused to accept the petitioner's claim for grant of compensation, disputing his title over the dispute land and his failure to raise any objection under Section 3C of the N.H. Act, the petitioner has claimed his title over the land in question with reference to averments made in the writ application and certain documents annexed thereto.



7. It is the petitioner's case that one Kamta Prasad had executed registered lease deed in favour of one Ram Jatan Roy on 17.04.1940, who used to pay rent to the ex-landlord after abolition of *Zamindari* and accordingly his name was mutated in Register-2 in *Sirista* of Government of Bihar on creation of *jamabandi*. The said Ram Jatan Roy, subsequently, executed a will in favour of one Ram Cheej Singh, who had perfected his right under the will and subsequently executed registered sale deed dated 10.05.1968 in favour of the petitioner's father. The petitioner's father had applied for mutation on the basis of said registered sale deed dated 10.05.1968, which was allowed and accordingly his name was mutated in place of Ram Jatan Roy of 2.78 acres land of C.S. Plot No. 2452 and C.S. Khata No. 496/8, Mauza Dhakaich.

8. It is also the petitioner's case that his father's vendor Ram Jatan Roy had succeeded on the basis of a registered sale deed against one alleged *sikmidar* in a proceeding under the Bihar Tenancy Act, 1885, in which State of Bihar was also a party, which goes to establish the right, title and interest of said Ram Jatan Roy. It is admitted in the writ application that in the revisional survey *khatian*, published on 11.06.1971, R.S. Khata No. 899, R.S. Plot No. 4694, admeasuring 2.80 acres, was carved out from C.S. Khata No. 496, C.S. Plot No.12452, but wrongly, in the *raiyyat*



column, it was recorded as '*Anabad Bihar Sarkar*'. Aggrieved by the said entry, the petitioner's father had filed an application before the Consolidation Officer, Simri, who had recorded mere possession of the petitioner's father, by order dated 08.11.1977. This is not in dispute that the Consolidation Officer had not accepted the claim of the petitioner's father as a *raiyat* of the land. It is the petitioner's own case that against the order of the Consolidation officer, dated 08.11.1977, no appeal was preferred, but it was out of sheer inadvertence. After his death, sons of Ram Awtar Pandey, including the petitioner, filed a case before the Deputy Director, Consolidation, giving rise to Consolidation Case No. 2 of 2018, which was disposed of on 26.03.2018, directing for correction of *jamabandi* records or rights in name of the sons of Ram Awtar Pandey, after expunging the name of the State of Bihar.

9. It must be noted here that said Consolidation Case No. 2 of 2018 was filed under Section 33A of the Consolidation Act. After the order dated 26.03.2018 was passed by the Deputy Director, Consolidation, the same was executed by the Consolidation Officer, Simri, and accordingly, the Consolidation Officer, Simri, by order dated 02.11.2018 ensured that names of four sons of Ram Awtar Pandey, including the petitioner, are



recorded in *Chakbandi* records of right for 2.80 acres area of land of said R.S. Khata No. 899, R.S. Plot No. 4694. It is also the petitioner's case that land possession certificate has also been issued by the Circle Officer on 11.08.2018 in the name of four sons of Ram Awtar Pandey. Copies of land possession certificates have been brought on record by way of Annexures-P/12 and P/13. In the light of the order of the Deputy Director, Consolidation, and subsequent compliance of the said order by the Consolidation Officer, coupled with issuance of land possession certificate, the petitioner approached the District Land Acquisition Officer for payment of compensation in respect of the land, which was acquired in 2010 itself.

10. In the counter affidavit filed on behalf of the State of Bihar, it has been stated that an *Anabad Bihar Sarkar* land is transferred to the requisitioning Department without payment of any compensation. It has been stated that more than 40 years after the order of the Consolidation Officer was passed in 1977, the petitioner filed a case before the Deputy Director, Consolidation, under Section 33A of the Consolidation Act, without any justification for delay.

11. A reply has been filed to the counter affidavit, reiterating the averments made in the writ application that the



petitioner's father had acquired title on the basis of registered sale deed dated 10.05.1968 executed by one Ram Cheej Singh, in whose favour a will was executed by Ram Jatan Roy.

12. Mr. Radha Mohan Pandey, learned counsel appearing on behalf of the petitioner, has submitted that it was in compliance of the statutory order passed by the Deputy Director, Consolidation, that alterations have been made in the *Chak Khatiyan* and names of the sons of the petitioner's father have been entered in all contemporaneous documents, which is enough to establish the title of the petitioner and his brothers over the land in question. According to him, since no amount of compensation has been paid to the petitioner, so far, despite acquisition having been made more than five years ago, entire acquisition proceedings stands lapsed by operation of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In support of his submission he has placed reliance on Supreme Court's decisions, in the cases of *Yogesh Neema and Ors. vs. State of M.P. and Ors.*, reported in (2016) 6 SCC 387, *Pune Municipal Corporation and Ors. vs. Harakchand Misirimal Solanki and Ors.*, reported in (2014) 3 SCC 183 and *Sree Balaji Nagar Residential Association vs. State of Tamil Nadu*, reported in (2015) 3 SCC 353. He has



further submitted that the District Land Acquisition Officer has not discharged his duty as a competent authority and has acted as if he were an officer of the State Government and was there to protect the interest of the State Government.

13. Mr. Raj Kishore Roy, learned Government Pleader No. 18, appearing on behalf of the respondent State of Bihar, has submitted that there is no illegality in the impugned order and the District Land Acquisition Officer appears to be right in his opinion that the Deputy Director, Consolidation, in purported exercise of his power under Section 33A of the Consolidation Act, could not have passed the said order dated 26.02.2018. He has contended that the manner in which the order has been passed by the Deputy Director, Consolidation, cannot be approved.

14. Before referring to the Supreme Court's decisions, reliance on which has been placed by learned counsel for the petitioner, I need to take note of certain glaring aspects of the matter. Indisputably, in the revisional survey Khatiyani, the land in question was recorded as '*Anabad Bihar Sarkar*'. Case of the father of the petitioner was, admittedly, rejected by the Consolidation Officer on 08.11.1977 itself. No appeal was, admittedly, preferred against the order dated 08.11.1977 by father of the petitioner. It is not mentioned in the writ application as to



when the petitioner's father passed away. Nearly 41 years of passing of the order by the Consolidation Officer dated 08.11.1977, an application was filed before the Deputy Director, Consolidation, admittedly, under Section 33A of the Consolidation Act. Section 33A of the Consolidation Act reads thus : -

“Section 33A - Correction of clerical or arithmetical errors.-

Notwithstanding anything contained in any other law for the time being in force, if the Consolidation Officer or the Assistant Director of Consolidation is satisfied that a clerical or arithmetical error apparent on the face of the record exists in any document prepared under any provision of this Act, he shall either on his own motion or on the application of any person interested, correct the same.” (emphasis added)

15. The power under Section 33A of the Consolidation Act is only for the purpose of correcting clerical or arithmetical errors. I find from the order of the Deputy Director, Consolidation, that, most surprisingly, he has dealt with the title of the petitioner and his brothers in respect of a land, which stood in the name of ‘*Anabad Bihar Sarkar*’ and accordingly ordered for correction in Chankbandi records of rights. Most peculiar aspect of the entire case is that though this is an admitted fact that the land was acquired way back in 2010 for widening of N.H.-84, upon declaration under Section 3D of the N.H. Act, land possession certificates are said to have been issued by the Circle Officer on



11.08.2018, in the names of all the four sons of Late Ram Awtar Pandey, which have been brought on record by way of Annexure-P/12 series and P/13. It is a matter of enquiry as to how the Circle Officer could issue land possession certificate in 2018 when, admittedly, the land stood vested absolutely in the Central Government with the declaration under Section 3D of the N.H. Act in 2010 itself.

16. The averments made in the counter affidavit that the notification was issued in official gazette under Section 3A of the N.H. Act is not disputed. Neither the petitioner nor his father raised any objection under Section 3C of the N.H. Act, which is also not in dispute. Section 3C of the N.H. Act allows any person interested in the land to object to the use of the land for the purpose disclosed in the notification under sub-Section (1) of Section 3A of the N.H. Act. Section 3D of the N.H. Act is explicit and states that where no objection under sub-Section (1) of Section 3C of the N.H. Act has been made to the competent authority within the period specified, the competent authority shall submit a report to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the official gazette that the land should be acquired for the purpose mentioned in sub-Section (1) of Section 3A of the N.H. Act. Sub-



section (2) of Section 3D of N.H. Act is useful for the present adjudication, which reads thus :-

“Section 3D (2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.”

17. It is evident, on a plain reading of sub-Section (2) of Section 3D of the N.H. Act, that the land in question stood vested absolutely in the Central Government free from all encumbrances once declaration under sub-Section (1) of Section 3D of N.H. Act was published in the official gazette. Publication of declaration, as contemplated under Section 3D of the N.H. Act, for acquisition of land in question is also not at all in dispute.

18. The decisions of the Supreme Court, which have been noted above and on which reliance has been placed by learned counsel for the petitioner, have no application at all in the present facts and circumstances. The present case involves peculiar facts where an application under Section 33A of the Consolidation Act for correction of clerical or mathematical error was filed more than four decades after the case of the petitioner's father was turned down by the Consolidation Officer in 1977 itself. Except a vague plea of 'inadvertence' for not questioning the correctness of the order of the Consolidation Officer passed in 1977, there is absolutely no plea, which has been taken as to why the petitioner



and his brothers approached the Deputy Director, Consolidation, more than four decades after the order of Consolidation Officer was passed.

19. It is also to be noted that Supreme Court's decisions, in cases of *Yogesh Neema* (supra), *Pune Municipal Corporation* (supra) and *Sree Balaji Nagar Residential Association* (supra), dealt with the provisions under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, whereas the acquisition in question is apparently under the provisions of the N.H. Act, 1956.

20. In my opinion, therefore, this writ application is misconceived and has no merit at all and is accordingly dismissed.

21. Before I part with this judgment, I must observe that the conduct of the Deputy Director, Consolidation, by passing order dated 26.03.2018 in Case No. 2 of 2018 in purported exercise of power under Section 33A of the Consolidation Act may require a deeper enquiry by the Department of Revenue and Land Reforms, Government of Bihar. The conduct of the Circle Officer, Simri, in issuance of land possession certificate in favour of the petitioner and his brothers in 2018 when the land was already



acquired in 2010 itself, may also require consideration by the Department.

22. I, therefore, direct the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, to look into the entire aspect of the matter and take appropriate action, if required, within a period of six months from today.

23. Let a copy of this order be communicated to the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	05.08.2019
Transmission Date	N/A

