

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3993 of 2018

1. Santosh Kumar Bhuwania and Anr Son of Sri late Bishwanath Bhuwania Resident of 3A Raja Santosh Road, P.O. Alipur,P.S. Alipur, District- 24 Pargana Kolkata.
2. OM Prakash Bhuwania Son of Sri late Bishwanath Bhuwania Resident of South City Residence , Tower 1, Flat 33K, 375 Prince Anwar Sah Road P.O. Lake Gardens, P.S.- Jadavpur, District-24 Pargana Kolkata.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Collector, Madhepura.
3. The Land Acquisition Officer, Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sushant Praveer , Advocate
For the Respondent/s : Mr. Raj Kishore Roy -Gp18

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

21 23-11-2023 Heard learned counsel for the petitioners and the

State

2. This writ petition has been filed for the following
reliefs:

(I) For issuance of direction in the nature of mandamus to the respondents to prepare the award for the acquisition of the land belonging to the petitioners, situated at Udakishunganj, Khata No. 197, Plot Nos. 1493, 1494 and 1495 admeasuring 23.22 acres which was acquired by the State Government in the year 1989 in spite of the fact that at the



relevant time the said land was declared to be surplus and was already notified as land belonging to the State Government and as such there was no requirement to further acquire the land in question under the Land Acquisition Act, 1894.

(II) For a direction upon the respondents to either pay the compensation for the land acquired by them, in accordance with the present law governing the subject or to release the land in question from the land acquisition process and return the vacant possession of the same to the petitioners.

(III) For a declaration that the award prepared for the land in question is no award under the Land Acquisition Act, 1894 rather is a declaration of compensation under the Bihar Land ceiling Act, 1961 under the nomenclature of an “Award” under the Land Acquisition Act, 1894.

(IV) For any other relief as the petitioners are found to be entitled to.

3 . The brief facts of the case giving rise to the instant application are that in the year 1973-74, the Additional Collector, Madhepura initiated a ceiling proceeding being Land Ceiling Case No. 45/73-74 wherein the land in question was also declared to be surplus and the draft statement was published. Being aggrieved by the said draft statement, the



Karta of the family namely Rameshwar lal bhuwania preferred appeal No. 53/1983-84 which was rejected by the Collector vide order dated 07.03.1984. Thereafter, a revision was preferred before the member, Revenue Board which was also rejected by the Collector vide order dated 11.04.1985 . Against the order dated 11.04.1985, the Karta filed CWJC No. 2087/1985 before the Hon'ble High Court, Patna. While the said writ application was pending before the Hon'ble High Court, the State Government came out with a notification contained in memo No. 85-2 dated 22.08.1989 for the acquisition of total of 34.50 acres of land in which the land of the petitioners (under ceiling) admeasuring 23.22 acres was also to be acquired. Subsequently, a correction letter was also issued vide memo No. 23-2 dated 26.04.1990 for certain corrections/modifications in the original notification . It is further submitted that an award was prepared for the land in question in the year 1992, however, no notice was received by the petitioners during or after the preparation of the said award. After passage of time the Hon'ble High Court vide order dated 25.09.1996 passed in the aforesaid CWJC No. 20877/1985 , disposed of the writ application remanding the matter to the Collector, Madhepura. The Collector, Madhepura in turn vide order dated 05.02.2001 passed in Ceiling case No.



53/96 declared the land to be free from ceiling. In view of order dated 05.02.2001 a final final notification was published vide District Gazette dated 22.07.2022 . The petitioner were forced to receive an amount of Rs. 76,282.36/- on 20.05.03 for their 23 acres of land with protest and thereafter preferred an application under section 18 of the Land Acquisition Act, 1894 before the Collector, Madhepura being Land Acquisition Case No. 04/2004 with a prayer to refer the matter to the concerned Subordinate Judge through their Attorney holder as the calculation of compensation was in view of the ceiling of the land in question . Accordingly, the Learned Collector, referred the matter to the Sub-Judge, Madhepura, wherein Land Acquisition Case No. 01/2008 has been registered and is still pending.

4. In the light of the aforesaid facts, it is the contention of the petitioner that the land was under the ceiling proceedings in the year 1992, in fact, the said Award was prepared under Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 in terms of the Sub Section (3) of the Land Acquisition (Bihar Amendment) Act, 1979 and thus the amount of compensation was calculated as per the provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. It is thus



submitted that no award under the Land Acquisition Act, 1894 was prepared and no compensation under the said Act of 1894 was paid to the petitioners. It is further contended that that the provisions of Land Acquisition (Bihar Amendment) Act, 1979 were plain and clear wherein vide Sub-Section (3) where the land in question was under ceiling proceedings the compensation was to be paid in accordance with Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, while sub-section 4 clearly stipulates that when the said land is released from ceiling proceedings, the compensation shall be paid in accordance with the provisions of Land Acquisition Act, 1894 and when in the present case the land in question was released in the year 2002, the District Magistrate, Madhepura ought to have calculated the compensation in terms of the Land Acquisition Act, 1894 instead of referring the matter to the Sub-Judge, Madhepura in the year 2004. Further it is humbly submitted that the issue before the Sub-Judge, Madhepura was completely different as the same was referred against the compensation paid to the petitioners under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 in terms of Sub-Section (3) of the Land Acquisition (Bihar Amendment)



Act, 1979 and thus there was no impediment in acting in accordance with Sub-Section (4) of the Land Acquisition (Bihar Amendment) Act, 1979 due to the pendency of a proceeding before the Sub-Judge, Madhepura. It is further relevant to submit that the question of law involved in the present case cannot be looked into by the Court below in as much as the same is beyond the scope of reference to it.

5 . By filing counter affidavit, it is submitted on behalf of the State that the land ceiling process has been started vide Land ceiling case No. 45/73-74 and finally disposed of on 05/02/2001 vide ceiling case No. 53/96 in context of the order passed on 25/09/1996 by the Hon'ble High Court in CWJC No. 2087/1985 while the Land Acquisition process for sub Divisional Office Udakisunganj has been started in 1989 and during the period of Land Acquisition , the ceiling case of the petitioner was under consideration before the Hon'ble High Court bearing CWJC No. 2087/1985. It is further submitted that the compensation of the land in question has been calculated on the basis of the provisions, laid down in Section 03 of Land Acquisition (Bihar amendment) Act 1979 (Bihar Act – 2 of 1980) so far as the claim of the petitioners regarding shelter of Section 24 of the new Land Acquisition Act 2013 , is concerned,



it is not applicable as the petitioners received their compensation which has been prepared under the existing provisions laid down in section 03 of Land Acquisition (Bihar amendment) Act. It is next submitted that on the request of the petitioners the claim has already been referred to the Competent Civil Court Madhepura , under section 18 of Land Acquisition Act 1984 for consideration of amount of compensation and is still pending. The aforesaid facts have also been admitted by the petitioner in paragraph 21 of the writ petition.

6. It is not in dispute, nor it can be disputed, that on the applications filed by the petitioner, Collector Madhepura, referred the matter of compensation before the Competent Court of the Civil Court, Madhepura, under Section 18 of the Land Acquisition Act, 1894, which is still pending. If a party is actively pursuing alternative remedies, relief under Article 226 must be refused as the petitioner cannot be allowed to pursue two parallel proceedings. It is settled law that, pursuance of multiple remedies for the same relief before different forums renders, the petition is non-maintainable under Article 226 of the Constitution.

7. Considering the rival submissions of the parties and facts and circumstances of the case , this writ petition is



disposed of with liberty to the petitioners to file a detailed representation before The District Collector, Madhepura (respondent No. 2) along with all the relevant documents in support of the claim, within a period of six weeks from the date of receipt of this order.

8 . In the event, such representation is filed before respondent No. 2 (The District Collector, Madhepura), the same shall be disposed of in accordance with law after hearing all the parties preferably within a further period of six months from the date of receipt of the representation .

(Prabhat Kumar Singh, J)

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