

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3133 of 2020

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Dadan Upadhyay son of Lallan Upadhyay Resident of Village- Majhauri, P.S.-
Badahra, District- Bhojpur, at present mohalla- Shanti Nagar, P.S.- Rail Bazar,
District- Kanpur (U.P.)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms, Government of Bihar, Patna
2. The Director, Land Acquisition, Revenue and Land Reforms Department, Government of Bihar, Patna
3. The District Magistrate, Bhojpur at Ara
4. The District Land Acquisition Officer, Bhojpur at Ara
5. The Additional Collector, Bhojpur at Ara

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddharth Harsh< Advocate
For the Respondent/s	:	Mr. Dhurjati Kr. Prasad (GP-14)
		Ms. Jahan Ara, AC to GP-14

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

12 06-11-2023 This writ application has been filed for following
reliefs:-

“a) For issuance of an appropriate writ/order/direction setting aside entire proceeding in Land Acquisition Case No. 7/5 of 1977-78 pending before the Land Acquisition Officer, Bhojpur at Ara and further holding that the proceeding has lost its force as per law, due to non payment of compensation within statutory period.

b) For issuance of an appropriate writ/order/direction commanding the respondents to initiate land acquisition proceeding with respect to petitioner’s land and to pay the adequate



compensation as per the new law of the land acquisition to the petitioner at earliest.

c) For issuance of an appropriate writ/order/direction commanding the respondents to forthwith restore the vacant possession of the petitioner over the land in question and to pay the ground rent at appropriate rate for the land of the petitioner for the period from 1975 till date the respondent either handover the possession of the land to the petitioner or pay the compensation for land acquisition.

d) For grant of such other(s) relief, the petitioner would be found entitled to, on the facts and in the circumstances of the case.”

2. Brief fact, giving rise to the writ application, is that three acre sixty five decimal land appertaining to Khata No.216 and Plot No. 948(area 2.56 acres), 947(area 8 decimals), 946(area 20 decimals), 945(area 49 decimals) and 944(area 32 decimals) situated at Mauza-Majhauri, P.S.-Badahra, Thana No.23, District-Bhojpur, is ancestral land of the petitioner. The survey *khatian* with respect to the land in question stood prepared in name of predecessor in interest of the petitioner and the land along with other lands already been mutated in name of the petitioner's family and after death of petitioner's father, the rent receipt is being issued in the name of this petitioner. But



due to unprecedented flood in the year 1975, several persons were displaced, as a result of which, for the purpose of rehabilitation of displaced persons, the government took immediate possession over the aforesaid land in question of the petitioner. At that time, father of the petitioner was alive and he used to take care and manage the agricultural affairs of the family. Although, the possession of the petitioner's land was taken by the government in the year 1975 itself, but no ground rent was either paid or proposed ever. However, the government initiated a land acquisition Case Number 7/5 of 1977-78 for the purpose of acquiring the petitioner's land detailed above, but the proceeding of the aforesaid land acquisition case was never concluded due to non allotment of fund and compensation for the land acquired and was not paid to the petitioner till date. Despite repeated request, the compensation for the petitioner's land was never given.

3. It is the contention of the petitioner that in view of the aforesaid facts and circumstances, respondents are required to pay ground rent to the petitioner for illegally occupying his aforesaid land from 1975 till date they hand over possession of land to the petitioner back. In case the government desires to acquire the land of the petitioner, land acquisition proceeding is



required to be initiated *de nove* under the new law of land acquisition and fair compensation must be paid to the petitioner as per law.

4. On the other hand, learned counsel for the respondent/State submits that no doubt, land acquisition proceeding was initiated for the acquisition of land, but in absence of payment of compensation, the land acquisition proceeding has lapsed more than 40 years back and acquisition has not been made. Learned counsel for the State further submits that though, acquisition was made, but possession of the land has not been taken by the District Administration, Bhojpur and as such, there is no question of handing over the possession of land. It (land in question) always remained in possession of the land holders i.e. petitioner. Learned counsel for the respondent/State further contends that at this stage, land acquisition proceeding cannot be initiated, as the same has already lapsed in the year 1977-78. Learned State counsel lastly submits that if some persons have encroached upon the land and has made even a temporary construction, the District Administration has no power to initiate land encroachment proceedings under Bihar Public Land Encroachment Act 1956 as the encroachment proceeding may be initiated only with



respect to the public land, but here the land in question is *raiya* and private land.

5. Having regard to the nature of disputes raised by the parties, such disputes once made, are required to be adjudicated on facts and evidence. The disputed question of fact can not be effectively dealt with in a petition under Article 226 of the Constitution of India. They cannot be decided on affidavits which are so discrepant and contrary in nature. These are matters which would be tried in a regular Civil proceeding.

6. Writ petition is, accordingly, dismissed.

7. Needless to say, the petitioner shall be at liberty to seek remedy before the appropriate forum as may be available to him in accordance with law.

(Prabhat Kumar Singh, J)

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