

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6480 of 2020**

Pushpa Devi, Wife of Gopal Prasad Barnawal, Resident of Gandhi Setu Link Road, Near Biscoman Colony Golambar, Beside Bihar Acupressure College, Gulzarbagh, P.S.- Gulzarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Deptt., Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Dy. Collector Land Reform, Patna City, Patna.
5. The Circle Officer, Patna Sadar, Patna.
6. The Managing Director, Bihar State Housing Board, Patna.
7. The Secretary, Bihar State Housing Board, Patna.
8. The Executive Engineer, Bihar State Housing Board, Patna Division- II, Bhooth Nath Road, Patna.
9. The Assistant Engineer, Bihar State Housing Board, Patna Division- II, Bhooth Nath Road, Patna.
10. The Junior Engineer, Bihar State Housing Board, Patna Division- II, Bhooth Nath Road, Patna.
11. Saurabh Kumar @ Saurabh Kumar Mauwar, Son of Late Ganesh Prasad Mauwar, Resident of Mohalla- Khan Mirza Lane, P.S.- Sultanganj, P.O.- Mahendru, District- Patna.

... .. Respondent/s

**Appearance :**

|                      |   |                               |
|----------------------|---|-------------------------------|
| For the Petitioner/s | : | Mr. Aaruni Singh, Advocate    |
| For the State        | : | Mr. Subash Prasad Singh, GA-3 |
|                      |   | Mr. Shiv Kumar, A.C. to G.A-3 |
| For the BSHB         | : | Mr. Pawan Kumar, Advocate     |

**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**ORAL JUDGMENT**

**Date : 23-02-2023**

Heard learned counsel for the petitioner, learned  
counsel for the State and learned counsel for the Bihar State  
Housing Board.



The petitioner has filed the instant application for the following relief(s):-

*“That this is an application praying for issuance of appropriate Writ / Writs and/or Order / Orders directing the concerned respondents to refrain from interfering with the peaceful possession of the Petitioner on a piece of land bearing Tauzi No.- 468, Thana No. 10, Khata No.- 79, Survey Khesra No. 329 admeasuring 1440 Sq.Ft. rightfully purchased by the Petitioner from the Vendor - Respondent No. 11 vide a registered Sale Deed No. 8511 dated 19/11/14.”*

It is the case of the petitioner that the petitioner purchased a piece of land bearing *Tauzi* no.468 , Thana no.10, *Khata* no.79, Survey *Khesra* no. 329 measuring 1440 sq.ft from the vendor (respondent no.11) vide registered sale deed no. 8511 dated 19.11.2014 (Annexure-P/1). Thereafter the petitioner applied for mutation of the land in her name vide Mutation Case no. 1157/4 of 2014-15 and by order dated 16.12.2014 passed in the said Mutation Case, the land in question was mutated in her favour. Subsequently, a boundary wall was constructed over the land in question. On the petitioner starting construction work, the officials of the respondent Bihar State Housing Board (hereinafter referred to as ‘the Board’) forcibly stopped the



construction work without following any procedure under law. On the petitioner recommencing the work, an F.I.R was also instituted at the instance of the Executive Engineer of the Board.

It is further case of the petitioner that the father of the petitioner's vendor (respondent no.11) was the owner of a total area of 2.92 acres. A part of the said land measuring 1.80275 acres was the subject matter of the acquisition proceeding, while 0.80 acres of land was not acquired. In spite of the 0.80 acres of land not being subject matter of the acquisition, as a result of the respondent-Board preparing a layout plan for the entire plot no. 329, the same was challenged by the father of the respondent no.11 in this Court by filing CWJC no. 3641 of 1996 which was disposed of by order dated 2.7.1998 directing the petitioner to move before the Managing Director of the Board who was to pass an order on the claim of the petitioner therein. It is submitted on behalf of the petitioner that the Managing Director of the Board vide his order dated 14.9.2001 (Annexure-P/7) admitted that only 1.80275 acres of land had been acquired and 0.80 acres had not been acquired. Subsequently, a Measurement Case no. 5 of 2015-16 was initiated before the D.C.L.R, Patna City, Patna however, the same was not taken to its logical conclusion. As the respondent-Board and its authorities were



creating obstruction in the construction by the petitioner on the piece of land purchased by him which was part of the area of 0.80 acres not acquired by the authorities, hence the petitioner filed the instant writ application for the relief as stated herein above.

Counter affidavits have been filed by the respondent-State as also by the respondent-Board.

In view of the order that the Court proposes to pass, the Court is not going into the details of the case of the respective respondents.

Referring to the statements made in paragraph nos. 8 to 15 of the counter affidavit filed on behalf of the respondent nos. 6 to 10, it is submitted by learned counsel appearing for the Board that the vendor (respondent no.11) of the petitioner filed CWJC no. 1880 of 2014 praying therein for payment and award of the acquired land of *Khata* no. 79, Survey plot no.329 measuring an area of 1.80275 acres and to leave the rest land measuring 0.80 acres. Further prayer was made to correct the map prepared by the Board and make a fresh measurement and demarcate the land in question. The said writ application was dismissed giving liberty to the petitioner therein to approach the Civil Court of competent jurisdiction for grant of appropriate



relief. It is further submitted that the appeal preferred against the said order vide L.P.A no. 1243 of 2018 was also dismissed vide order dated 2.12.2019.

At this stage it is submitted by learned counsel appearing for the petitioner that from perusal of the order dated 18.7.2022 in the instant case, it would transpire that the parties had jointly agreed that the dispute can be settled between the petitioner, the Housing Board and the State if proper measurement is done in presence of the parties. Pursuant to the said order and appointment of the survey knowing Advocate Commissioner, the work of measurement was under-taken and a report has also been submitted which makes things clear and nothing much remains to be decided between the parties.

Learned counsel for the respondent-Board as also learned counsel for the respondent-State have objections to the said report.

Having heard learned counsel for the parties and taking into consideration the averments on record, the facts not in dispute are that the vendor of the petitioner ie the respondent no.11 had preferred a writ application in this Court vide CWJC no. 1880 of 2014 praying therein for various reliefs including for demarcation of 0.80 acres of land which was not the subject



matter of the acquisition and the petitioner having purchased part of the said 0.80 acres through a registered sale deed from the said respondent no.11. This Court was pleased to dismiss the said writ application vide order 20.7.2016 (Annexure- R/3). Entire order dated 20.7.2016 passed in CWJC no.1880 of 2014 is being quoted herein below:-

*“After having heard the parties at some length, this Court finds that the relief sought for on behalf of the petitioner in the present writ petition is based on disputed questions of facts, which cannot be appropriately gone into in a proceeding filed under Article 226 of the Constitution of India.*

*Furthermore, learned counsel appearing on behalf of the respondents have drawn the attention of this Court towards orders dated 02.07.2013 and 22.11.2012 passed in CWJC No.11083 of 2011 and CWJC No.12007 of 2011 respectively (Annexure-F series of the supplementary counter affidavit filed on behalf of the respondent nos.2 and 3). By aforesaid orders, in identical circumstances, the aforesaid two writ petitions have been dismissed by a Co-ordinate Bench of this Court.*

*In order to maintain consistency, and since the issues of facts raised on behalf of the petitioner are under serious dispute, the present writ petition is dismissed, but a liberty is granted to the petitioner to approach the Civil Court of competent jurisdiction for grant of appropriate*



*relief(s). ”*

The appeal preferred against the said order vide LPA no. 1243 of 2018 was also dismissed vide order dated 2.12.2019 (Annexure- R/4). The entire order dated 2.12.2019 is being quoted herein below for the ready reference:

*“Heard learned counsel for the parties.*

*The appellant prays for the following relief:-*

*It is therefore prayed that your Lordships may graciously be pleased to issue notice to the private respondent call for the records of the case and after hearing the party/parties be pleased to allow the LPA and set aside the order dated 20.07.2016 passed in CWJC No. 1880 of 2014,”*

*Having heard learned counsel for the parties, we are of the considered view that the appellant has not been able to explain the inordinate delay of more than two years in preferring the appeal. We also noticed that the learned Single Judge has not passed any order on merit and considering the disputed question of fact, based on earlier decision taken by a Co-ordinate Bench of this Court with respect to similarly situated petitioners, dismissed the writ petition leaving it open to the petitioner to take recourse to such other remedies as are*



*otherwise available in accordance with law.*

*Mr. Lalit Kishore, learned Advocate General, vehemently argues that the appellant is trying to rake up the issue after a period of more than 40 years.*

*Basis of the information obtained through the process of RTI cannot be considered for adjudication of the appellant's right which stood settled way back with the land being acquired in accordance with law.*

*As such, we do not find any merit in this appeal. It is, accordingly, dismissed.”*

The Court has gone through the report of the Advocate Commissioner which has been filed pursuant to the order dated 18.7.2022 passed in the instant case and is of the opinion that the matter in issue cannot be settled as a result of the said report.

Further from the orders passed in the writ application on 20.7.2016 and in the appeal (L.P.A) on 2.12.2019, which has been quoted at length herein above, the Court is of the opinion that the matter in issue which the petitioner is trying to raise in the instant application was raised and decided by the aforesaid orders in the case filed by the vendor (respondent no.11) of the petitioner. The petitioner purchased part of the same plot/land



from respondent no.11 ie the land which was subject matter of the orders dated 20.7.2016 (Annexure- R/3) in CWJC no. 1880 of 2014 and dated 2.12.2019 (Annexure- R/4) in L.P.A no. 1243 of 2018, both having been filed by the petitioner’s vendor (respondent no.11). The petitioner having purchased the plot on 19.11.2014 (sale deed; Annexure-P/1) cannot be permitted to agitate the issue all over again.

In the opinion of this Court also, the matter in issue can be decided more appropriately in the Civil Court of competent jurisdiction as directed in the order dated 20.7.2016, in the case filed by the petitioner’s vendor.

Thus, not finding any merit in the instant application, the same is dismissed granting liberty to the petitioner to approach the Civil Court of competent jurisdiction for the reliefs prayed for herein.

**(Partha Sarthy, J)**

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