

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16994 of 2009

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RAMESH KUMAR SINGH, S/O Late Dayanand Singh R/O Vill.- Farhada,
Post- Nathmalpur, P.S. Barhara, Distt.- Bhojpur At Ara

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Revenue Deptt., Govt. of Bihar, Patna
3. The District Magistrate, Bhojpur at Ara
4. The District Land Acquisition Officer, Bhojpur at Ara
5. Rajgrihi Singh S/O Late Rameshwar Singh R/O Vill.- Shahjahanpur, Post-
Mahuli Ghat, P.S. Barhara, Distt.- Bhojpur At Ara
6. Chandrabhushan Singh S/O Late Rameshwar Singh R/O Vill.-
Shahjahanpur, Post- Mahuli Ghat, P.S. Barhara, Distt.- Bhojpur At Ara
7. Ram Niwas Singh S/O Late Raj Bahadur Singh R/O Vill.- Shahjahanpur,
Post- Mahuli Ghat, P.S. Barhara, Distt.- Bhojpur At Ara

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar Manglam, Advocate
For the State	:	Mr. Mithlesh Kumar Singh, AC to SC-15
For the Respondent	:	Mr. Satyapal Singh, Advocate

nos.5 to7

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT

Date : 25-08-2023

1. Heard learned counsel for the petitioner, learned
counsel for the respondent nos.1 to 4 and learned counsel for the
respondent nos. 5 to 7.

2. The instant application has been filed by the
petitioner for the following relief(s):-

*“ (I) For issuance of an appropriate writ in the nature
of CERTIORARI, for quashing the order dated
14.08.2009 passed by the Respondent no.4 in Land
Acquisition Case No.11/2006-07, whereby and where
under the Respondent no.4 has declared the possession*



of Respondent nos. 5 to 7 in respect of plot no.176, area 57 decimals, pertaining to Khata No.32, Thana No.457 and Khata No.5, Plot no.53 area 24 decimals and has accordingly directed the payment of compensation to the Respondent nos. 5 to 7 in lieu of acquisition of the said land by the State Government for the public purposes and thereby the Respondent no.4 was clinched to reject the objection filed by the petitioner.

(II) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent No.4 for payment of compensation amount to the petitioner since the land under acquisition belong to the petitioner and his full brother Dinesh Kumar Singh since long back and if it has been paid to the Respondent no.5 to 7, then for a further direction to pay the amount of compensation to the petitioner and recover the amount paid to the Respondent nos. 5 to 7.

(III) For issuance of any other appropriate writ/writs, order /orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. The case of the petitioner in brief is that Sansar Singh had two sons, namely, Pragas Singh and Lalji Singh. Pragas Singh had one son Dhir Singh who, in turn, had one son Bhavani Sahay Singh. The first wife of Bhavani Sahay Singh namely Tapeshwari Kuer died in March, 1967 on which he married Gulabo Kuer. Bhavani Sahay Singh executed a will



dated 21.4.1967 and subsequently died in the year 1969. Gulabo Kuer died on 28.12.1999.

4. The other son on Sansar Singh namely Lalji Singh had three sons ie Amluk Singh, Suryanath Singh and Basudev Singh. The branches of Amluk Singh and Suryanath Singh ended with their heirs dying issueless. Basudev Singh had a son namely Jainath Singh. Jainath Singh had two sons namely Rameshwar Singh and Raj Bahadur Singh. Respondent nos.5 and 6 are the sons of Rameshwar Singh while respondent no.7 is the son of Raj Bahadur Singh.

5. It may be mentioned here itself that so far as the connection of the petitioner with the family of Sansar Singh is concerned, Mosmat Gulabo Kuer was the mother's sister (*mausi*) of the father of the petitioner (Dayanand Singh). The father of the petitioner was called by Gulabo Kuer in the lifetime of Bhavani Sahay Singh itself to look after the lands owned by him. In the will dated 21.4.1967 executed by Bhavani Sahay Singh, it was mentioned that his wife Gulabo Kuer would come in possession of the entire property owned by him and on her death, Dayanand Singh would come in possession.

6. The land in question which is subject matter of the instant case is an area of 57 decimal in *Khata* no.32, Plot no.176



in *Mauza*- Noorpur as also an area of 24 decimal in *Khata* no.5, Plot no.53 in *Mauza* Noorpur Navbarar, both in Circle Barahara in the District of Bhojpur at Ara.

7. It is the petitioner's case that for the purpose of supply of pure drinking water, the State Government decided to acquire land for which acquisition proceedings were initiated. The Land Acquisition Case no.11/2006-07 was initiated and a notice was issued in the name of the recorded tenants ie Dulhin Tapeswari Kuer and Dulhin Gulabo Kuer, both wives of Bhavani Sahay Singh. The petitioner appeared in the land acquisition proceeding along with all supporting documents. After hearing the petitioner as also the respondent nos.5 to 7, the District Land Acquisition Officer, Bhojpur, Ara was pleased to pass order dated 14.8.2009 directing that the compensation for the land acquired can be paid to respondent nos.5 to 7 on the condition that the payment would be subject to any order which may be passed by the Court and their heirs will also be bound by the decision. It is against this order that the instant writ application has been preferred.

8. Sri S.B.K. Manglam, learned counsel for the petitioner submitted that so far as the impugned order dated 14.8.2009 is concerned, the same is contrary to the findings in



the 145 Cr.P.C proceedings wherein joint possession of Mosmat Gulabo Kuer and father of the petitioner was declared. Further, by judgment dated 29.6.1977 (Annexure-3), Title Suit no.193 of 1973 was also decided against the grandfather of respondent nos.5 to 7. Learned counsel for the petitioner further submits that on account of having been dispossessed from a house, Mosmat Gulabo Kuer and others filed Title Suit no.50 of 1981 against the father of respondent nos.5 to 7 and the same was decided in favour of Mosmat Gulabo Kuer by judgment dated 25.5.1986. Title Appeal no.92 of 1986 preferred by Avadh Kishor Singh, son of Rajgrihi Singh (Respondent no.5) and others was dismissed by judgment dated 8.4.1994. It was submitted that in the facts and circumstances of the case, as the petitioner has been coming in peaceful possession of the land after the death of Mosmat Gulabo Kuer on 28.12.1999 as also in view of the will dated 21.4.1967 executed by Bhavani Sahay Singh, the compensation amount for the acquisition of the land which was the subject matter of Land Acquisition Case no.11 of 2006-07 be paid to the petitioner.

9. In response, it was submitted by Sri Satyapal Singh, learned counsel appearing for the respondent nos.5 to 7 that so far as the land in question belonging to Bhavani Sahay



Singh is concerned, Tapeshwari Kuer was the real wife of Bhavani Sahay Singh while Mosmat Gulabo Kuer was the sister of Tapeshwari Kuer. So far as the proceeding under section 145 Cr.P.C is concerned, the same was decided by order dated 5.5.1973 in favour of Mosmat Gulabo Kuer but the same was only with respect to possession and further the same was not in favour of father of the petitioner. The petitioner's father had no right, title or possession over the land in question. Title Suit no.193 of 1973 having been decided against them, the father of respondent nos.5 to 7 filed F.A. no.777 of 1977 in the Patna High Court which was dismissed for non-prosecution, however, an application for restoration of the same has been filed. In spite of death of Bhavani Sahay Singh in the year 1969 and Mosmat Gulabo Kuer remaining alive, no probate case was filed by Mosmat Gulabo Kuer for 30 years and the same was filed only on 28.12.1999. On an objection being filed, the probate case was converted to Title Suit no.12 of 2006 and the said Title (Probate) Case no.12 of 2006 was dismissed by judgment dated 17.8.2019 passed by the learned Additional District Judge-XV, Ara. It is, thus, submitted that title of the land of Bhavani Sahay Singh in no manner having passed on Dayanand Singh (the father of the petitioner), the Land Acquisition Officer was left



with no alternative and rightly directed for payment of compensation for the acquired land in favour of respondent nos.5 to 7. It was submitted that the petitioner not having been granted probate of the will dated 21.4.1967, the claim of the petitioner for payment of compensation was baseless and futile. As such the writ application be dismissed.

10. Having heard learned counsel for the parties and having perused the material on record, the Court finds that the dispute in the instant case is with respect to payment of compensation on account of acquisition of the land owned by Bhavani Sahay Singh which is the subject matter of Land Acquisition Case no.11 of 2006-07 and wherein by order dated 14.8.2009, the District Land Acquisition Officer, Bhojpur at Ara has directed for payment of compensation to respondent nos.5 to 7.

11. Bhavani Sahay Singh, on the death of his first wife Mosmat Tapeshwari Kuer in March, 1967 entered into a second marriage with Mosmat Gulabo Kuer. The fact as to whether Mosmat Gulabo Kuer was the wife of Bhavani Sahay Singh or not stands concluded with the findings in judgment dated 29.6.1977 passed in Title Suit no.193 of 1973/ 18 of 1977 wherein the learned 3rd Additional Sub-Judge, Ara came to a



conclusive finding that Mosmat Gulabo Kuer is the lawfully wedded wife of Bhavani Sahay Singh.

12. It may be mentioned here that Mutation Case no.381 of 1968-69, filed by the grandfather of respondent nos.5 to 7 was dismissed on 19.5.1969. Apprehending eviction, Mosmat Gulabo Kuer filed a petition for initiating a proceeding under section 144 Cr.P.C against the grandfather of respondent nos.5 to 7. The same got converted into a proceeding under section 145 Cr.P.C and by order dated 5.5.1973 was decided in favour of Mosmat Gulabo Kuer wherein the learned Judicial Magistrate- Ist Class held that she could not be dispossessed without the other side obtaining a decree from a competent Court.

13. So far as the petitioner is concerned, his case is that his father (Dayanand Singh) was the sister's son of Mosmat Gulabo Kuer and that Mosmat Gulabo Kuer had brought him in the lifetime of Bhavani Sahay Singh itself to look after his land/property. It is no one's case that Dayanand Singh was adopted by Bhavani Sahay Singh. Further case of the petitioner is that a will dated 21.4.1967 was executed by Bhavani Sahay Singh according to which Mosmat Gulabo Kuer was to come in possession of the entire property owned by him and on her death



the property would come to be owned by Dayanand Singh.

14. So far as the will dated 21.4.1967 is concerned, inspite of the death of Bhavani Sahay Singh in the year 1969, no case for probate was filed and it was only after the death of Mosmat Gulabo Kuer on 28.12.1999 that in the year 2000, Dayanand Singh filed a case for probate of the will which was registered as Probate Case no.20 of 2000. On Dayanand Singh passing away on 6.1.2000, the petitioner along with his brothers and sisters were substituted. On an objection being filed, the same was converted into Title (Probate) Case no.12 of 2006. By judgment dated 17.8.2019 Title (Probate) Case no.12 of 2006 was dismissed by the Additional District Judge- XV, Ara against which the petitioner has preferred F.A no. 193 of 2019 in the Patna High Court which is pending for adjudication.

15. It would be relevant to point out here itself that from the contents of the judgment dated 17.8.2019 (Annexure- 13 to supplementary affidavit of respondent nos.5 to 7) dismissing Title (Probate) Case no.12 of 2006, it transpires that the learned Additional District Judge took note of the facts that the age of Bhavani Sahay Singh at the time of execution of the will was about 90-95 years, no sample signature in Hindi of Bhavani Sahay Singh had been brought on record for



comparison, the signature of the testator on different pages of the will appeared to be different, no case for probate was filed for a period of 30 years after the death of Bhavani Sahay Singh in 1969 and considering the material on record came to the conclusion that the applicant (Dayanand Singh and on his death the petitioner and his siblings) had not been able to prove the execution of the will in accordance with law and clear the suspicions surrounding the same.

16. On the other hand, so far as the direction contained in the order impugned dated 14.8.2009 passed by the District Land Acquisition Officer for payment of the amount of compensation to respondent nos.5 to 7 is concerned, as stated above, while deciding the proceedings under section 145 Cr.P.C by order dated 5.5.1973 in favour of Mosmat Gulabo Kuer, it was categorically directed that her possession would not be disturbed till the opposite party (grandfather of Respondent nos.5 to 7 herein) obtained an order from a competent Court. The grandfather of respondent nos.5 to 7 filed Title Suit no.193 of 1973/ 18 of 1977 praying for declaration of title and recovery of possession against the defendant Mosmat Gulabo Kuer. By judgment dated 29.6.1977, the suit was dismissed holding that the plaintiff (grandfather of respondent nos.5 to 7) had no title



and possession over the suit land. F.A. no.777 of 1977 was preferred against the judgment dated 29.6.1977 dismissing the suit but the said First Appeal was also dismissed for non-prosecution by order dated 31.3.2014. It further transpires that a restoration application (M.J.C. no.1656 of 2014) was filed for restoration of the dismissed First Appeal but this restoration application has also been dismissed for default by order dated 26.3.2016.

17. Thus, in view of the facts and circumstances as narrated herein above, on one hand while the suit filed by the grandfather respondent nos.5 to 7 for declaration of title and recovery of possession was dismissed, the appeal arising out of the said judgment in the suit is also dismissed and so is the restoration application filed for restoring the same; on the other hand, the basis for the petitioner claiming compensation with respect to acquisition of land was only the will dated 21.4.1967 executed by Bhavani Sahay Singh in favour of the petitioner's father. However, the Title (Probate) Case no.12 of 2006 filed with respect to the said will was dismissed by judgment dated 17.8.2019 against which F.A. no.193 of 2019 has been preferred in the Patna High Court and is pending for adjudication.

18. Thus, in the opinion of the Court, so far as the



position, as it stands today is concerned, neither the petitioner nor the respondent nos.5 to 7 have ownership over the land which is subject matter of Land Acquisition Case no.11 of 2006-07 and thus neither of them are entitled for payment of compensation for the same. The District Land Acquisition Officer committed an error in passing order dated 14.8.2009 in Land Acquisition Case no.11 of 2006-07 directing for payment of compensation to respondent nos.5 to 7. The order not being sustainable for the reasons as discussed above is hereby quashed.

19. It may be noted here that on passing of the impugned order dated 14.8.2009 by the District Land Acquisition Officer, the instant writ application was filed in the year 2009 itself and by order dated 8.12.2009 passed in this case, the operation of the order dated 14.8.2009 was stayed.

20. In the facts and circumstances of the case it is directed that the total amount of compensation for the acquired land of Bhavani Sahay Singh which is the subject matter of Land Acquisition Case no.11 of 2006-07 shall be kept by the District Land Acquisition Officer, Bhojpur at Ara in a fixed deposit. The said amount (fixed deposit) will be kept in the custody of the District Magistrate, Bhojpur at Ara to be paid to



the person legally entitled as and when the appeals ie First Appeal no.193 of 2019 arising out of the probate case filed by the father of the petitioner and/or F.A. no.777 of 1977 (after it's restoration) arising out of the suit filed by the grandfather of respondent nos.5 to 7 is decided by this Court.

21. The writ application stands disposed of with the above observations and directions.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	12.05.2023.
Uploading Date	25.08.2023.
Transmission Date	

