

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10637 of 2021

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1. Chandreshwar Prasad Thakur @ C P Thakur, S/O late Radha Mohan Thakur R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 2. Deepak Thakur @ Deepak Kumar Thakur, S/O C P Thakur R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 3. Jay Narayan Thakur, S/O late Balroop Thakur, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 4. Hari Shankar Sharma, S/O Gauri Shankar Sharma. R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 5. Ram Udgar Thakur, S/O late Ramadhrey Thakur, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 6. Mukesh Kumar, S/O Triveni Thakur, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 7. Santosh Kumar Thakur, S/O late Uma Shankar Thakur, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 8. Ranjan Kumar Sharma, S/O Sri Jagannath Sharma, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 9. Sushil Kumar Jha, S/O late Baidyanath Jha, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 10. Arun Kumar Jha, S/O late Baidyanath Jha, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 11. Nikesh Kumar Jha S/O late Baleshwar Jha R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 12. Chandra Mohan Jha, S/O late Damodar Jha, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 13. Amit Kumar, SD/O Lalan Prasad Sharma, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 14. Ashish Kumar, S/O late Krishna Deo Thakur, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 15. Bhajju Ray, S/O late Lakhan Ray, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 16. Rishikesh Kumar, S/O Maheshwar Thakur, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
 17. Rai kameshwar Sharma, S/O late Suryadeo Rai, R/O village and P.O. -



Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.

18. Shatrudhan Thakur, S/O Kishori Thakur, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
19. Krishna Murari Jha S/O late Butan Jha @ Sahdeo Jha R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
20. Ram Binod Jha, S/O late Anurag Jha @ Sahdeo Jha, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
21. Shrawan Ray, S/O late Satahu Ray, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
22. Lal babu Ray, S/O late Ghocha Ray, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
23. Mahendra Ray, S/O late Bhuthu Ray, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
24. Nanhaki Ray, S/O late Bhuthu Ray, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
25. Umesh Ray, S/O late Balihari Ray, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
26. Shankar Ray, S/O late Ram Chandra Ray, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
27. Shiv Shankar Ray, S/O late Ram Chandra Ray, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.
28. Ganesh Ray, S/O late Ram Chandra Ray, R/O village and P.O. - Dubaha Bujurg, P.S. - Sakra, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
4. The Director, Consolidation Directorate under Revenue and Land Reforms Department, IVth Floor, Land Development Bank, Budh Marg, Patna.
5. The Engineer-in-Chief, Sinchai Srijan, Water Resources Department, Bihar, Patna.



6. The Superintending Engineer, Planning and Monitoring, Circle-2, Water Resources Department, Patna.
7. The Superintending Engineer, Tirhut Irrigation Circle, Ratwara, Muzaffarpur.
8. The Chief Engineer, Sinchai Srijan, Water Resources Department, Motihari.
9. The Executive Engineer, Tirhut Canal Division, Motipur Camp- Muzaffarpur.
10. The District Magistrate, Muzaffarpur.
11. The Superintendent of Police, Muzaffarpur.
12. The Sub Divisional Magistrate, East - Muzaffarpur.
13. The Circle Officer, Moraul, Muzaffarpur.
14. The Circle Officer, Sakra Muzaffarpur.
15. The Station House Officer, Sakra, Muzaffarpur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9409 of 2022

S.M Ehteshamul Hasan Rehmani, Son of S.M Fazle Hasan, Resident of Mohalla - Pakki Sarai Road, In front of Urdu Girls High School, Chandwara, P.S. - Town and District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Water Resources Department, Govt. of Bihar.
2. The District Magistrate-cum-Collector, Muzaffarpur.
3. The Sub-Divisional Officer, Muzaffarpur.
4. The Tirhut Gandak Canal Project Officer, Division Motipur, Camp- Muzaffarpur, District - Muzaffarpur.
5. The Block Development Officer, Block and District Muzaffarpur.
6. The Circle Officer, Pusa Circle and District Samastipur.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 10637 of 2021)

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate



Mr.Vagisha Pragya Vacaknavi, Advocate

For the Respondent/s : Mr. P. K. Shahi, AG

Mr. Sajid Salim Khan, SC-25

(In Civil Writ Jurisdiction Case No. 9409 of 2022)

For the Petitioner/s : Mr.Mohammed Abu Haidar, Advocate

For the Respondent/s : Mr.Vinay Kirti Singh (GA 2)

Mr. Sumant Kumar Singh, AC to GA-2

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 04-09-2023

Heard learned counsel for the petitioners and learned counsel for the State.

2. CWJC No.10637 of 2021 has been filed for prohibiting the respondents from forcibly dispossessing the petitioners from their Chak lands/holdings as fully detailed in Annexure P/2, situated in mauza-Dubaha Bujurg without following the procedure established by law. CWJC No.9409 of 2022 has been filed for restraining the respondents in the work of construction of Canal over the land of the petitioners in light of the Land Acquisition Proceeding of 1974.

3. Learned counsel for the petitioners in CWJC No.10637 of 2021 submits that there are in total 28 petitioners who are aggrieved with the action of the respondents authority who wants to dispossess the petitioners from their lands. He



further submits that the petitioners came to know about the action of the respondents in the month of January 2021 for the first time when the respondents started announcements in the locality to vacate the land. Thereafter, the petitioners started verifying these facts and it came to their knowledge that 32.83 acres of land were acquired in Village-Dubaha Bujurg, Revenue Thana No. 964 and these lands were part of Land Acquisition Proceeding No.128/1972-73 initiated by the Special Acquisition Officer, Gandak Yojna, Muzaffarpur, as such, petitioners of both the writ petitions want to restrain the respondents from construction of Canal over the lands which were acquired in the year 1973-74.

3.1 Counsel further submits that the land acquisition proceeding was initiated in 1972-73, but the actual physical possession has not been taken for the lands of the petitioners and others of the village -Dubaha Bujurg and they continued in actual physical possession of their raiyati lands. The Government of Bihar accepted the rent of the lands in question and issued a rent receipt in lieu thereof. Counsel further submits that the State Government has launched a scheme of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the 'Act of 1956') prior to 1979



and in the year 1979, a notification under section 26A of the Act of 1956 was issued by which consolidation operation was closed and due to result of consolidation operation fresh maps and records were prepared, the configuration of the lands were changed. In result, different boundaries and plots were handed over to different raiyats.

3.2 Counsel further submits that no payment for any kind of award has been made to the raiyats on the basis of the consolidation map, khatian. In this regard, the petitioners have submitted a description of their lands with old Khata, old Plot as well as new khata, new plot. Counsel for the petitioners further submits that a certificate of transfer in Form-15 under Section 15 of the Act of 1956 has also been issued which is the conclusive proof of the title and possession of the petitioners in respect of the lands mentioned in such certificates which is duly recognized by the Government of Bihar from before 1979 as Chak Raiyats. Many respondents of the area/locality were also transferred their lands through valid registered sale deeds. Land Possession Certificates and land receipts for the new plots were also issued to them.

3.3 Learned counsel submits that possession of the lands of the petitioners was not taken by the Water Resources



Department or by the State of Bihar in the acquisition proceedings of the year 1972-73. Petitioners and their forefathers continued in peaceful possession of the same land till date and 49 years have elapsed. Learned counsel for the petitioners further submits that even assuming that lands were acquired and possession was taken by the State Government /Water Resources Department, Bihar then also it was merely on paper and it shall be assumed that the State has waived their all rights as they admitted the title and possession of the petitioners by conducting operation of Consolidation Act on the said land, by accepting rent, issuing rent receipt, establishing the relationship of landlord and tenants between the State Government and the petitioners.

4. Learned counsel for the petitioners developed the second alternative argument that even if any title vested in the Government because of the acquisition of land in the year 1973-74 then also such title had extinguished by the lapse of time under the provisions of the Limitation Act and the State Government recognized and reaffirmed the right, title and possession of the petitioners. In this way, the adverse title of the petitioners developed as they have continued for verification for more than 30 years in the present case.



5. Learned counsel for the petitioners further submits that there is a serious dispute with regard to the identity of lands because, after 1972, the consolidation process of the area was started which was finally closed in the year 1979. In result, the original lands under the acquisition of 1973-74 have changed their identity by the Act of 1956. It has also been mentioned that petitioners are enjoying the property without any hindrance and are absolute owners till date and they have rent receipts for the said land.

6. Counsel further submits that the Gandak Canal Project for the construction of the canal was not viable and it was abandoned in the midst of the construction work long back but all of a sudden in February 2021, the respondents came on the lands by which the petitioners came to know that their lands are going to be taken into possession forcibly. Counsel further submits that the said area is the front-line area of Muzaffarpur and Samastipur districts. In this area, cash crops requiring less irrigation are grown and the construction of the canal in question will result in not only eradicating the agricultural activities but also depriving the local people of their livelihood and also water logging in the area. It has further submitted that the said canal was supposed to go through Valmikinagar Barrage and then to



Dalsinghsarai via Champaran, Muzaffarpur, and Samastipur for which lands were acquired in 1972-73 on the basis of a survey conducted in 1964-65, but the same was protested as the construction was not in the public interest and there is a question of technical viability also.

7. It is further submitted that the Gandak Canal Project was proposed by the then Food Processing and Irrigation Minister, Dr. Rajendra Prasad for providing better irrigation facilities to Champaran, Muzaffarpur, and Saran districts. The scheme of the project was approved by the government in 1954. Several rainy small rivers are coming from Nepal as well. The water from all these streams was collected and used for irrigation of wheat fields. The water level in that area is very low and easy to dig wells for irrigation. It is further submitted that the government of Bihar and the beneficiary never came into possession of the lands in question. On the basis of the aforesaid acquisition proceeding, the petitioners peacefully continued over such lands, then removing the petitioners, taking possession without any statutory right over such Chak lands by the authorities amounts to violating the statutory legal rights of the petitioners to hold the Chak land which is not under acquisition proceeding. It has also been stated that under Section



28 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, once the scheme of consolidation has been confirmed under Section 13 of the said Act, no land in any notified area shall be acquired by the State Government to leave a fragment within the meaning of Section 2(5) of the Act of 1956.

8. Learned counsel for the petitioners concludes his argument with the submissions that the action of forcibly dispossessing the petitioners at the hands of the State authorities is not good and if they are encroachers, then they can be dispossessed only by way of initiation of proceeding under the provision of Bihar Public Land Encroachment Act, 1956.

9. Learned counsel for the petitioners in CWJC No. 9409 of 2022 also submits that the lands of the petitioners were acquired for the construction of the canal in the year 1974, but against the said acquisition neither any compensation has been paid to the petitioners nor the physical possession of the land in question has been taken by the department and, thus, the petitioners are in continuous possession over the land in question. The petitioners are paying rent continuously.

10. Learned counsel for the petitioner further submits that it is well-settled law that if neither physical possession has



been taken nor the proper compensation has been made then the acquisition proceeding is deemed to have lapsed and therefore, the authority should start fresh proceeding for acquisition of the said land under the new Act of 2013. He further submits that if excavation is completed for the construction of the canal, then flood shall come into the adjacent village which will jeopardize the life and livelihood of the people at large. However, the petitioners made several representations to that effect before the authority concerned, but nothing happened.

11. Senior Advocate, Shri P. K. Shashi, learned Advocate General with Mr. Sajid Salim Khan, SC-25 appearing on behalf of the State submits that the petitioners of both the writ petitions have no case at all. The land on which the petitioners filed the present writ petitions and raised the question of possession and dispossession is the subject matter of Infrastructure Projects necessary for the development of the country/State and is useful for the public at large.

12. A counter affidavit has been filed on behalf of respondent No.9 in CWJC No. 10637 of 2021, stating therein that the Gandak Irrigation and Power Project was formulated at the initiation of ex-President of India, Dr. Rajendra Prasad, the then Minister in-charge, Food and Agriculture, Govt. of India.



After getting all the statutory clearances, this mega Gandak Project got approval from the Planning Commission in the year 1961. The aim and objective of the project was to provide better irrigation facilities to the plains of north Bihar, U.P., and some portions of Nepal. The work of the project was started and smoothly progressed till 1984-85, but under the advice of the Planning Commission, the work was closed on 31st of March, 1985. Subsequently, on the suggestion of the Planning Commission, the scheme for completion of residual work of Eastern Gandak Main Canal (Tirhut Main Canal) along with its distribution system under Gandak Phase II for Rs.1799.50 crore at 2011-12 price level was put up before the Central Water Commission for consideration. The Commission after having found the proposed command area is fully dependent on monsoon rainfall and the scheme technically feasible and economically viable, recommended for consideration and acceptance of the Advisory Committee. The Advisory Committee of the Ministry of Water Resources, Govt. of India accepted the aforesaid recommendation and cleared the scheme in its 113th meeting held on 12.01.2012. Thereafter investment clearance was also accorded by the Planning Commission and then the said project was administratively approved by the



Government of Bihar. It is further submitted that even though the eastern Gandak Canal System could not be completed in its first phase, the required land for the entire system had been acquired long back in the year 1973-74 by the Special Land Acquisition Officer, Kosi Project, Laheriasarai (Darbhanga) after making payment of appropriate compensation to the concerned land owners/raiyats under the provisions of the Land Acquisition Act, 1894. Hence, the said land acquisition proceeding attained finality and thereafter physical possession of the land was handed over to the Executive Engineer, Tirhut Canal Division, Gandak Project, Dholi on 13.08.1974.

13. *Per contra*, the learned Advocate General in reply to the pleadings of counsel for the petitioners submits that the land in question was acquired in the year 1973-74 for a public project, known as Tirhut Canal Project/Gandak Irrigation and Power Project. The importance of this project can be considered in this aspect that upon completion, it shall have the irrigation potential of 1.46 Lac hectares. of land and the project will cover the residual CCA of 1.22 Lac Hectares. The construction work at Canal has commenced from R.D. 827.70 to R.D. 909.40 for which an agreement has been entered into between the Executive Engineer, Tirhut Canal Division, Motipur and NCC



Limited, on 23.09.2020. According to him, this project is a project of public importance at large for which the notification for the acquisition was issued under the provisions of the Land Acquisition Act, 1894 by virtue of notification No. 115 dated 31.01.1973. Thereafter, a declaration of notification bearing No. 1141 dated 04.09.1973 was published in Bihar Gazette dated 05.12.1973 and awards were prepared on 13.07.1974 and almost all the raiyats were paid full compensation amount in the month of July-August, 1974. The possession of the acquired land was taken on 13.08.1974 under Form 17 of the Land Acquisition Act, 1894 (Annexure-A series of the counter affidavit in CWJC No. 10637 of 2021). In CWJC No. 9409 of 2022, the payment vouchers and land possession certificate are annexed as annexures -A & B of the counter affidavit.

14. Learned Advocate General further submits that both the writ petitions have been filed after a lapse of about 49-50 years of acquisition of land in question. In most cases, the ancestors of the petitioners and in some cases, the petitioners had received the payment of compensation for the acquisition of their respective lands. Some of them have received enhanced compensation pursuant to an award passed by the competent forum/Court, when the matter was referred to under Section 18



of the Land Acquisition Act, 1894. As an illustration, the father of petitioner no.1, namely, Radha Mohan Thakur received enhanced compensation vide LA. Case No. 36 of 1978 and L.A. Case No. 37 of 1978. Learned Advocate General further submits that some of the persons similarly situated have tried to reopen the land acquisition proceeding earlier before this Hon'ble Court by way of filing CWJC No. 77 of 2014 titled as Kripa Shanker Prasad Thakur vs the State of Bihar and Ors. In the said case, prayer was made to the State to return the agricultural lands which were acquired by the State for the said Tirhut Canal Project/Gandak Irrigation and Power Project on the ground that possession over the land has never been taken by the government and terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013'), the proceeding would lapse and "the land acquired having never been put to use till date, for which it was acquired, there was no necessity for acquisition and as such, the land must be restored to the petitioner". In the said writ petition, the Hon'ble Court has rejected all the issues relating to possession, payment of compensation, and non-user, therefore, rejected the said writ petition with a reasoned order.



15. Learned counsel for the petitioners further submits that in another case CWJC No. 4075 of 2017, titled as Gonu Prasad vs. the State of Bihar and Ors., the same question has been raised, i.e. Tirhut Canal Project/Gandak Irrigation and Power Project for which land was acquired in the year 1973-74 have lapsed due to the reason that the possession of the land is still with the petitioners as State Government did not take physical possession of the land and also in the light of the enactment of the Act of 2013, the earlier acquisition proceeding should be declared void. The said writ petition was also dismissed holding that possession of the land was taken by the competent authority and handed over to the Executive Engineer of Tirhut Canal Project/Gandak Project. Once the acquisition proceeding is completed after taking over possession by the competent authority and payment of compensation to the land owner, the acquired land is vested in the State in view of Section 16 of the Old Act and the State is free to utilize the said land after removing the unauthorized person from the possession of the same, if needed.

16. In addition to that, the learned Advocate General has placed reliance on a decision rendered by a Five Judges Bench of Hon'ble the Apex Court decided on 6th of March,



2020 in S.L.P. (C) Nos. 9036 and 9038 of 2016 (Indore Development Authority Vs. Manoharlal & Ors.) in which the applicability of Section 24 of the Act of 2013 has been answered. According to which, it has been held that a time-barred claim does not reopen concluded proceedings nor allow landowners to question the legality of the mode of taking possession to reopen proceedings or the mode of deposit of compensation in the treasury instead of Court to invalidate acquisition.

17. Learned Advocate General further submits that in the rejoinder filed by the petitioners, the petitioners have not denied the fact that the compensation amount has not been paid to them, rather the counsel for the petitioners has raised the grievances that in the said area, consolidation proceeding was initiated and due to consolidation proceeding, the lands in question have been consolidated as new Chak Khata and for some of the lands new Chak Khata physical possession have never been taken; and some of the land have been soled through registeed sale deed after allotment of new Chak Khata and rent receipt were generated in the name of the purchasers. In this background, the learned Advocate General submits that at the time of passing of an award, under the land acquisition



proceeding of the acquired land, none of the petitioners or their ancestors had raised any objection.

18. According to the State, consolidation operation was initiated in some areas on 28.12.1957 and in some areas on 09.09.1959, and the said consolidation operation was completed on 13.01.1979 (Annexure -6 series). He conclusively submits that the acquisition have been completed much before the final publication of the consolidation proceeding and it will have no bar on acquisition already made, particularly when the possession taken, award published and award has been received by most of the land owners. No objections had ever been raised by the petitioners or their ancestors during consolidation proceedings and now after lapse of about 45-50 years, they are raising question with *mala fide* intention.

19. Learned Advocate General has placed reliance on the case of *Santosh Sharma Vs. Union of India and Ors.* reported in (2013) 15 SCC 563 and submitted that in the said case, it has been held that there was no justification for entertaining the acquisition proceeding after 35 years of acquisition.

19.1 He further placed reliance on the case of *Andhra Pradesh Industrial Infrastructure Corporation Limited Vs.*



Chinthamaneni Narasimha Rao and Others. reported in (2012) 12 SCC 797 in which it has been held that once an award has been passed and possession has been taken, the land vests in the State and there is no lapse under Section 24 (2) of the Act of 2013.

20. He further submits that in the present case, admittedly, the land acquisition proceeding was completed in the year 1974, preparation of award, payment of compensation, and the possession of land has been taken. As such, both the writ petitions are fit to be dismissed.

21. After going through the pleadings of the parties and hearing the arguments, the issues involved in both the writ petitions are as follows;

(i) whether the petitioners are entitled to continue on possession over the said land which has already been acquired in the year 1974, award published, payment received and some of them have received compensation after reference under Section 18 of the old Act on the ground that petitioners are in actual physical possession, some of them have created sale deeds for the said land and rent receipts were issued after sale deed by the State authorities themselves, shall create any right in favour of the petitioners ?;



(ii) whether the Act of 2013 creates any hindrance for the respondent-State and provides any right to the petitioners in the facts and circumstances of the case ? ; and

(iii) whether any rights carrying adverse possession developed in favour of the petitioners as claimed by the petitioners in their writ petition in the present facts and circumstances of the case ?

22. The admitted position of this case is that the lands in question were acquired for the purpose of construction of Tirhut Canal Project/Gandak Irrigation and Power Project under different phases. It also transpires that the acquisition proceeding for the lands in question was initiated in the year 1973-74 by virtue of notification for acquisition dated 31.01.1973. Declaration of the acquisition was made on 04.09.1973 and published on Page No2052-54 in Bihar Gazette dated 05.12.1973 and the awards were prepared on 13.07.1974, the land was acquired, possession was taken on 13.08.1974. All raiyatis were paid full compensation in the month of July -August, 1974 and some of them have received enhanced compensation pursuant to an award passed by the competent Court when the matter was refereed under Section 18 of the Land Acquisition Act, 1894 and the question of returning of land



for the said project has already been decided by this Hon'ble Court in the case of Kripa Shankar Prasad Thakur Vs. the State of Bihar vide order dated 25.03.2014 passed in CWJC No. 77 of 2014 against which no appeal has been preferred and, subsequently, the question of initiation of fresh proceeding and taking over of the possession of the land under acquisition has also been decided vide order dated 06.09.2018 passed in CWJC No. 4075 of 2017 titled as Gonu Prasad vs. the State of Bihar and Ors. against which no appeal has been preferred.

23. It is true that the said two writ petitions decided by this Hon'ble Court have not been filed by the present petitioners, but it is also true that the legal questions involved in those cases were identical to that of the present case since lands for Tirhut Canal Project/Gandak Irrigation and Power Project were in question.

24. On the point raised by learned counsel for the petitioners that some of the sale deeds have been created and, subsequently, rents have been paid to the State Government and rent receipts have been issued whereas in some cases, the land possession certificates have been issued from the State officials for those lands in favour of the petitioners from whom the land has been taken or in favour of the purchasers as in the reply to



the counter affidavit, the petitioners of CWJC No. 9409 of 2022 has attached Annexure-6 by which it has been shown that after acquisition operation of lands has been sold to other persons and rent receipts were also issued to the new purchasers. In this regard, one case decided by Hon'ble the Apex Court is quite relevant. The 3-Judges Bench of Hon'ble the Apex Court in the case of *Shiv Kumar and Anr. Vs. Union of India and Ors.* reported in (2019) 10 SCC 229 and furtheron in the case of *C. S. Gopalakrishnan ETC. Vs. the State of Tamil Nadu and Others.* reported in (2023) 7 S.C.R. 939, which held as follows :-

“1. The question that would arise is as to the locus standi of the appellants, who admittedly purchased their lands after the initiation of land acquisition proceedings, to maintain a challenge to the provisions of the Industrial Purposes Act and the proceedings initiated thereunder. [Para 18] [951-F-G]

2. As regards the issue of the appellants' locus standi, that very aspect was considered by a 3-Judge Bench of this Court in Shiv Kumar and another Vs. Union of India and others [(2019) 10 SCC 229]. The question therein was whether subsequent purchasers of acquired land would be entitled to seek invalidation of the acquisition on the ground of delay under Section 24(2) of the new LA Act. The Bench held that a sale transaction, effected after the Notification under Section 4 of the old LA Act, is void and would be ineffective to



transfer the land and such a sale would not cloth the subsequent purchasers with title, whereby they could claim to be in possession. It was observed that it would be profoundly unfair and unjust and against the policy of law to permit such a purchaser to claim resettlement or claim lands back, as envisaged under the new LA Act. [Para 22] [953-A-C].

2. As both the appellants seek to assail the validity of the Industrial Purposes Act only in the context of the acquisition proceedings initiated thereunder in relation to the lands purchases by them after issuance of the Public Notice under Section 3(2) thereof, viz., the equivalent of a Notification under Section 4 of the old LA Act, their challenge is tainted and unacceptable in its very inception. They were both subsequent purchasers and are deemed to be aware of the acquisition proceedings. In that regard, it may also be noted that the original owners of the subject lands raised their objections in response to the Public Notice issued under Section 3(2) in the year 2007, but chose to sell their lands in 2012 and 2013. In any event, neither of these subsequent purchasers can be permitted to claim ignorance of the acquisition proceedings. In effect, the very sale transactions under which they claim title and interest in the subject lands are rendered void in the eye of law. Mere passage of time and publication of the Section 3(1) Notice after their purchase of the lands would not save their sale transactions or vest them with a right to attack the acquisition. In consequence, this Court finds no reason to entertain their challenge to the Industrial Purposes Act on the grounds of arbitrariness and violation of Article 14 of the Constitution or their



consequential challenge to the acquisition proceedings, Civil Appeal Nos. 5692- 5693 of 2021 are, therefore, liable to be dismissed on this short ground. [Para 23] [953-F-H; 954-A-C].

25. Hence, the subsequent purchase of land by sale transaction which was already acquired is void and would be ineffective and shall not create any right in favour of the subsequent purchaser, rather it would be profoundly unfair and unjust and in violation of the law. Therefore, in that view of the matter, any person who purchased the land which was subject to acquisition even by virtue of a registered sale deed followed by the issuance of rent receipts or obtainment of a land possession certificate of those lands, whose title had already been transferred to the State by acquisition, is basically a dishonest step, and this Court shall not permit to grant recognize to such steps. Therefore, the claim of the petitioners cannot be accepted, and are therefore rejected on the *supra* grounds.

26. So far as the effect of consolidation proceeding is concerned, in this regard, it had been held that during the pendency of consolidation proceeding, itself, the land acquisition proceedings had been completed, i.e. in the year 1973-74 and in a few cases, up to 1977, whereas consolidation proceeding continued upto year 1979. The petitioners, if have



had any claim, ought to raise objection in the consolidation proceeding itself, but by making false representation before the consolidation officials and obtaining Chak Khata, creation of rent receipt and obtainment of land possession certificate in their names by suppressing the fact from the consolidation and revenue officials that their lands were the subject matter of the land acquisition proceeding and had already been acquired by the government shall also be treated as dishonest steps on the part of the petitioners and cannot be permitted to be perpetuated. Therefore, in this view of the matter, this Court holds that the grounds raised by petitioners on the basis of the consolidation proceeding are not acceptable and are hereby rejected.

27. So far as the question of continuation in possession over the land over which the petitioners claim to have been staying for more than 50 years and that whether adverse possession is in their favour, are concerned, this Court is raising the provisions of Section 16 of the old Act and states that once the acquisition process had started with notification for acquisition followed by the declaration of the acquisition, followed by preparation of award, and thus followed by possession of acquired land for which payment of compensation amount had been completed in between the year 1973-74, there



is absolutely no title or possession in favour of the petitioners. In the present case, the acquisition was completed in July -August 1974, but due to various reasons, the project could not be started. Neither the land is a movable item that can be moved from one place to another nor it is possible for the State to segregate the acquired portion and always guard it.

28. In view of the aforesaid, this Court is of the view that the original raiyat must not have to re-enter into possession as the possession of the State is in the nature of of eminent domain. The properties have been absolutely vested in the State and the petitioners or nearby persons using the land cannot be said to be adversely taken rather, in my opinion, it is virtually treated to be the permissive possession. Once the permissive possession is there, the question of adverse possession shall never arise in law. Therefore, the State is free to take its own land for the purpose for which it has been acquired or for any other purpose(s).

29. In view of the finding of the constitution Bench Judgment of Hon'ble the Apex Court in the case of Indore Development Authority (*supra*) and in the light of the judgment rendered in the case of *Santosh Sharma (supra)*, there is no question for any right to be available to the petitioners.



30. This Court also holds that it is not proper on the part of the petitioners to challenge the acquisition proceeding or claim possession on the ground of adverse possession. Transfer of lands were taken from them in 1974. After lapse of 50 years of acquisition, creating hurdle in an important project which is of public importance, on frivolous grounds, which are basically non-existent ground in the eye of law, are not proper being honest citizens.

31 Hence, both the writ petitions are hereby dismissed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
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