IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3437 of 2015
In
Civil Writ Jurisdiction Case No.1747 of 2015

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Kalpana Rani W/o late Arun Kumar son of Shiv Kant Sahay, resident of village – Aima, P.S. Khijarsarai, District – Gaya, at presently residing at Gewal Bigha, P.S. Gewelbigha, District Gaya

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Sanjay Kumar Agrawal, Collector, Gaya.
3. Binay Kumar Saha, Land Acquisition Officer, Gaya.
4. Krityanand Ranjan, Deputy Collector, Land Reforms, Gaya.
5. Anuj Kumar, Circle Officer, Khijarsarai, District- Gaya.
6. Rajesh Kumar Mishra, Executive Engineer, Public Works Department, Gaya.
7. C.B. Singh, Union of India through Executive Engineer Public Works Department, Gaya.

... ... Opposite Party/s

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with

CIVIL REVIEW No. 538 of 2018
In
Civil Writ Jurisdiction Case No.1747 of 2015

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1. The State Of Bihar through the Executive Engineer, Central Public Works Deptt, Now Road Construction Department, Gaya.
2. The Collector, Gaya.
3. The Land Acquisition Officer, Gaya.
4. The Deputy Collector, Land Reforms, Gaya.
5. The Circle Officer, Khizarsarai, District- Gaya.

... ... Petitioner/s

Versus

1. Kalpana Rani Wife of Late Arun Kumar Resident of Village- Atma, P.S.- Khizarsarai, District- Gaya.
2. Ankit Shivam @ Ankit Kumar Son of Late Arun Kumar Resident of Village- Atma, P.S.- Khizarsarai, District- Gaya.
3. Miss Ankita Shivam Daughter of Late Arun Kumar Resident of Village- Atma, P.S.- Khizarsarai, District- Gaya.
4. Miss Anandita Shivam D/o Late Arun Kumar Resident of Village- Atma, P.S.- Khizarsarai, District- Gaya.
5. The Union of India through Executive Engineer, Central Public Works

Department, Gaya.

... ... Opposite Party/s

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Appearance :
(In Miscellaneous Jurisdiction Case No. 3437 of 2015)
For the Petitioner/s : Mr. Raju Giri, Advocate
For the Opposite Party/s : Mr. Manoj Kumar Ambastha, SC-26
(In CIVIL REVIEW No. 538 of 2018)
For the Petitioner/s : Mr. Manoj Kumar Ambastha, SC 26
For the Opposite Party/s : Mr. Dinesh Prasad Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

12 24-07-2023 Heard the parties.

2. The MJC No. 3437 of 2015 was preferred by Arun Kumar (since deceased) for compliance of the order dated 26.08.2015 passed in CWJC No. 1747 of 2015 by a bench of this Court (Hon'ble Mr. Justice Birendra Prasad Verma, as his Lordship then was) by which on the basis of the counter affidavit filed by the State calculating the amount of compensation for the land acquired to the tune of Rs. 74,05,809/- (Rupees Seventy Four Lakhs Five Thousand and Eight Hundred Ninety), the writ petition was disposed of with a direction to pay the amount within a period of two months.

3. As the State failed to comply the order, the aforesaid contempt application (MJC No. 3437 of 2015) was filed for compliance of the order.

4. The case of the State is that they preferred modification of the order which was disposed of on 20.11.2018 in MJC No. 808 of 2016 with liberty to file Civil Review.

Accordingly, Civil Review No. 538 of 2018 was preferred.

5. Accordingly, this Court decided to take up the Civil Review first.

CIVIL REVIEW NO. 538 of 2018

6. The contention of the State Counsel in the Civil Review is that the petitioner himself has shown the nature of land as '*pokhar*' and thus it was an agricultural land.

7. Learned State Counsel has taken this Court to letter no. 207 dated 30.03.2015 issued by the Circle Officer, Khijarsarai, Gaya addressed to the Executive Engineer, Road Division No. 1, Gaya in which on the basis of report of the Revenue Assistant, the nature of land was found to be '*pokhar*'.

8. He further took this Court to another letter issued by the said Executive Engineer, Road Division No. 1, Gaya dated 08.05.2015 by which request was made to fix the rate of the land.

9. It is his contention that since the District Land Acquisition Officer, Gaya failed to act in time, the Executive Engineer took the MVR of highest rate and considering the nature of the land of the petitioner as commercial, the amount in question was calculated and accordingly, counter affidavit filed which resulted into the disposal of the writ petition with the

aforesaid direction.

10. It is the further case of the learned State Counsel that when the consistent stand of the petitioner was that the land is being used by him is '*pokhar*'; now he cannot go back and say the same is commercial in nature. He as such, submits that the petitioner is entitled to payment of compensation only at the rate of agriculture land which comes to Rs. 6,73,900/- which according to him was sent to the late petitioner's family members and was refused.

11. Per contra, learned Counsel appearing for the substituted petitioners submit that the nature of the land is determined on the basis of the average sale price for similar type of land situated nearby/adjoining lands and it is not the case of the State that the entire stretch of area which has been acquired for the purpose of the construction; compensation has been made treating as agricultural land and only the petitioner is demanding the commercial rate.

12. It is his further submission that the State is harping on the statement made by the petitioner that it is a '*pokhar*' which hardly matters when the registry office of the area is charging the fee at the commercial rate.

13. It is his further submission that pursuant to an

information under Right To Information Act by son of the deceased petitioner, the Registry Office, Gaya informed that the same comes within purview of the commercial land.

14. Learned Counsel for the State at this stage objected to this submission stating that the same is of 2018 which cannot be equated with 2014.

15. Learned Counsel for the petitioners has taken this Court to section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (henceforth for short the 2013 Act) which read as follows:-

> *"26.* ***Determination of market value of land by Collector -*** *(1) The Collector shall adopt the following criteria in assessing and determining the market value the land, namely:-*
>
> *(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or*
>
> *(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area: or*
>
> *(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies*

or for public private partnership projects, whichever is higher.

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1. -The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.- For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.-While determining the market value under this section and the average sale price referred to in Explanation I or Explanation 2, any price paid, as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4-While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the *purposes of calculating market value.*

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that-

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act. 1899 (2 of 1899) by the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate per adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent, of the value so calculated under sub-section (1) or *sub-section (2) or sub-section (3) as the case may be:*

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice."

16. It is his reiteration that when the State itself has failed to provide any details of the compensation given to the adjoining '*raiyats*', section 26 debars it from singling out the petitioners herein.

17. The last submission is that the State is not having any point to get a review of the order in the light of an order of the Hon'ble Supreme Court in **Kamlesh Verma vs. Mayawati**

and Ors. reported in **2013(8) SCC 320** with specific reference to paragraphs 20, 20.1 and 20.2 which read read as follows:-

> *" 20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*
>
> *20.1. When the review will be maintainable:*
>
> *(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
>
> *(ii) Mistake or error apparent on the face of the record;*
>
> *(iii) Any other sufficient reason.*
>
> *The words "any other sufficient reason" have been interpreted in* ***Chhajju Ram v. Neki*** *and approved by this Court in* ***Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius*** *to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in* ***Union of India v. Sandur Manganese & Iron Ores Ltd.***
>
> *(Bold Mine)*
>
> *20.2. When the review will not be maintainable:*
>
> *(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
>
> *(ii) Minor mistakes of inconsequential*

import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

18. It is his submission that there is no discovery of new and important facts or evidences after the passing of the order which prompted the State to file the review.

19. It is his further submission that there is no mistake or error in the order itself and further there is no sufficient

reason and as such, his prayer is for dismissal of the Civil Review and direction to the State to comply the order.

20. Having gone through the rival submissions, this Court finds force in the submission put forward by the learned Counsel for the petitioner.

21. The only point on which the State is harping is that the original deceased petitioner himself had stated that there is a '*pokhar*' on the said land which also found incorporated in revenue survey '*khatiyan*'.

22. In the considered view of the Court, the State Government which is acquiring the land has to be fair to all the '*raiyats*' and entire stretch of land which is/are is going to be acquired has to be compensated in the same way.

23. To the repeated query by the Court, whether it is the case of the State that the adjoining '*raiyats*' have been compensated treating it to be agricultural land whereas only in petitioner's case it has been ordered that he has to be given commercial rate, the answer is/was not forthcoming.

24. The only repeated submission of the State Counsel remain that when the petitioner himself stated the land to be '*pokhar*', he cannot be given the commercial rate of compensation.

25. A perusal of 'the 2013 Act' clearly shows that the determination of the market value of the land has to be done on the average sale price on similar type of land and when the State failed to provide any details of grant of compensation to the adjoining '*raiyats*'; it can be safely construed that the decision of the Writ Court in accepting the own version of the State in making payment at the commercial rate cannot be interfered with.

26. Further, the case cited by the learned Counsel for the petitioners in **Kamlesh Verma vs. Mayawati and Ors. (supra)** clearly debars the State from filing this review as;

(i) it had complete knowledge of the statement of the petitioner that the land is '*pokhar*';

(ii) still, the Executive Engineer found the petitioner to be entitled to be compensated at commercial rate;

(iii) it was not a new discovery for the State on which it pounced upon to file Civil Review;

(iv) it is again not the case of the State that there is any mistake or error in the order;

(v) no further sufficient reason and/or the case that no other '*raiyats*' other than the petitioner have been given compensation at the commercial rate.

27. To conclude, the State completely failed to satisfy the Court and/or made out any case warranting the review of the order.

28. The Civil Review No. 538 of 2018 is accordingly dismissed.

<u>MJC No. 3437 of 2015</u>

Heard the parties.

The aforesaid contempt petition has been preferred for compliance of the order dated 26.08.2015 passed in CWJC No. 1747 of 2015.

As the Civil Review was pending, the order was not complied. In between, the original petitioner died and now his heirs including the widow is fighting for the justice.

The State is directed to comply the order within a period of eight weeks and a supplementary show cause has to be filed.

List this case after eight weeks.

(Rajiv Roy, J)

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